

EXHIBIT 394

Thursday, January 17, 2019

HIGHLY CONFIDENTIAL - SUBJECT TO FURTHER
CONFIDENTIALITY REVIEW

16 Videotaped Deposition of AARON BURTNER,
17 held at Keller Rohrback LLP, 1201 Third
18 Avenue, Suite 3200, Seattle, Washington,
19 commencing at 8:45 a.m. on the above date,
before Susan Perry Miller, Registered
Diplomate Reporter, Certified Realtime
Reporter, Certified Realtime Captioner.

GOLKOW LITIGATION SERVICES
23 877.370.DEPS | fax 917.591.5672
deps@golkow.com

1 A P P E A R A N C E S:

2

3 LEVIN PAPANTONIO THOMAS MITCHELL
4 RAFFERTY PROCTOR, P.A.
5 BY: WILLIAM C. BAKER, JR., ESQUIRE
6 Of Counsel
7 316 South Baylen Street
8 Pensacola, Florida 32502
9 (850) 435-7000
10 Counsel for Plaintiffs

11

12 WEISMAN, KENNEDY & BARRIS CO., L.P.A.
13 BY: DANIEL P. GOETZ, ESQUIRE
14 dgoetz@weismanlaw.com
15 BRIAN ROOF, ESQUIRE
16 broof@weismanlaw.com
17 (via teleconference)
18 101 West Prospect Avenue
19 Midland Building, Suite 1600
20 Cleveland, Ohio 44115
21 (216) 781-1111
22 Counsel for Plaintiffs

23

24 ZUCKERMAN SPAEDER LLP
25 BY: PAUL B. HYNES, JR., ESQUIRE
phynes@zuckerman.com
1800 M Street, NW, Suite 1000
Washington, DC 20036
(202) 778-1800
Counsel for CVS Indiana, LLC, CVS RX
Services, Inc., and the Witness

26

27 WILLIAMS & CONNOLLY LLP
28 BY: JULI ANN LUND, ESQUIRE
jlund@wc.com
29 (via teleconference)
30 725 Twelfth Street, N.W.
31 Washington, D.C. 20005
32 (202) 434-5000
33 Counsel for Cardinal Health, Inc.

1 A P P E A R A N C E S, Continued:
2

3 JONES DAY
4 BY: NICOLE LANGSTON, ESQUIRE
nlangston@jonesday.com
(via teleconference)

5 77 West Wacker
Chicago, Illinois 60601
(312) 782-3939
6 Counsel for Walmart
7

8 REED SMITH LLP
9 BY: SHANA E. RUSSO, ESQUIRE
srusso@reedsmith.com
(via teleconference)
10 136 Main Street, Suite 250
Princeton Forrestal Village
11 Princeton, New Jersey 08540
(609) 987-0050
12 Counsel for AmerisourceBergen Drug
Corporation
13

14 COVINGTON & BURLING LLP
15 BY: MICHAEL J. LANOSA, ESQUIRE
mlanosa@cov.com
(via teleconference)
16 1999 Avenue of the Stars
Los Angeles, California 90067-4643
17 (424) 332-4764
Counsel for McKesson Corporation
18

19 BAKER HOSTETLER LLP
20 BY: MELISSA D. BERTKE, ESQUIRE
mbertke@bakerlaw.com
(via teleconference)
21 127 Public Square
Key Tower, Suite 2000
22 Cleveland, Ohio 44114
(216) 621-0200
23 Counsel for Endo Health Solutions
Inc., Endo Pharmaceuticals Inc., Par
24 Pharmaceutical, Inc. and Par
Pharmaceutical Companies, Inc.
25

1 A P P E A R A N C E S, Continued:

2

3 TUCKER ELLIS LLP

4 BY: ANDREA M. GLINKA PRZYBYSZ, ESQ.

5 andrea.przybysz@tuckerellis.com

6 (via teleconference)

7 233 South Wacker Drive, Suite 6950

8 Chicago, Illinois 60606

9 (312) 624-6300

10 Counsel for Janssen Pharmaceuticals

11 and Johnson & Johnson

12

13 TRIAL TECHNICIAN:

14 WILLOW ASHLYNN,

15 Golkow Litigation Services

16

17 VIDEOPHOTOGRAPHER:

18 DAVID KIM,

19 Golkow Litigation Services

20

21 ALSO PRESENT:

22 BRIAN ASQUITH, Weisman Kennedy

23 STEPHANIE HECKMAN, Paralegal

24 KAITLYN EEKHOFF, Motley Rice

25 (via text streaming)

26

27

28 --00--

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1 (Thursday, January 17, 2019, 8:45 a.m.)

2 THE VIDEOGRAPHER: We are now
3 on the video record. My name is David
4 Kim. I'm a videographer for Golkow
5 Litigation Services. Today's date is
6 January 17th, 2019, and the time is
7 8:45 a.m.

8 This video deposition is being
9 held in Seattle, Washington in the
10 matter of National Prescription Opiate
11 Litigation, MDL 2805, for the
12 U.S. District Court, the Northern
13 District of Ohio, Eastern Division.

14 The deponent is Aaron Burtner.

15 Will counsel please identify
16 themselves for the record.

17 MR. BAKER: This is William
18 Baker for the plaintiffs.

19 MR. GOETZ: Dan Goetz on behalf
20 of the plaintiffs.

21 MR. HYNES: Paul Hynes on
22 behalf of CVS Indiana LLC,
23 CVS RX Services, Inc., and the
24 witness, Aaron Burtner.

25 THE REPORTER: Would those on

1 the phone announce, please?

2 MS. BERTKE: Melissa Bertke

3 from -- sorry. Melissa Bertke from

4 BakerHostetler on behalf of the Endo

5 Defendants.

6 MR. ROOF: Brian Roof on behalf
7 of plaintiffs.

8 MR. LANOSA: This is Michael
9 Lanosa on behalf of McKesson.

10 MS. LANGSTON: Nicole Langston
11 from Jones Day on behalf of Walmart.

12 MS. LUND: Juli Ann Lund from
13 Williams & Connolly on behalf of
14 Cardinal Health.

15 MS. RUSSO: Shana Russo of Reed
16 Smith on behalf of AmerisourceBergen
17 Drug Corporation.

18 MS. PRZYBYSZ: Andrea Przybysz
19 from Tucker Ellis on behalf of J&J and
20 Janssen.

21 THE VIDEOGRAPHER: The court
22 reporter is Susan Miller and will now
23 swear in the witness.

24 MR. BAKER: Before we do that,
25 could everybody on the phone, please,

1 please double-check, triple-check,
2 that you have your mute button on? I
3 appreciate it. Thank you.

4 (Witness sworn by the
5 reporter.)

6 P R O C E E D I N G S

7 AARON BURTNER,
8 having taken an oath to tell the truth, the
9 whole truth, and nothing but the truth,
10 testified as follows:

11 EXAMINATION

12 QUESTIONS BY MR. BAKER:

13 Q. Mr. Burtner, the arrangement
14 here today is you are represented by counsel
15 seated to your left, Mr. Paul Hynes, correct?

16 A. Yes.

17 Q. Okay. And Mr. Hynes has met
18 with you for the last two days to prepare you
19 for your deposition? Is that correct?

20 A. Yes.

21 Q. You're no longer employed by
22 CVS. In fact, you live in Seattle,
23 Washington, which is where we are today. Is
24 that correct?

25 A. That is correct.

1 Q. Okay. And you worked for CVS
2 from 2000 what to 2012?

3 A. 2010 to 2012.

4 Q. Okay. When you started at CVS,
5 what was your position?

6 A. My original position was loss
7 prevention supervisor.

8 Q. And when you quit CVS, what was
9 your position?

10 A. SOM manager.

11 Q. Give me the month that you
12 started in 2010 and the month that you quit
13 in 2012.

14 MR. HYNES: Objection.

15 Compound.

16 Go ahead.

17 A. Sorry, one clarification. I
18 was there until 2013. June of 2010 until
19 June of 2013.

20 QUESTIONS BY MR. BAKER:

21 Q. Okay. What are you currently
22 doing here in Seattle?

23 A. I am currently employed by
24 Amazon.

25 Q. Okay. What have you done to

1 prepare for your deposition?

2 A. I have met with Paul.

3 Q. Mr. Hynes?

4 A. Mr. Hynes, and a few other
5 associates with his law firm, and attorneys
6 from within CVS.

7 Q. Okay. You know Mr. Hynes
8 represents CVS in this case, he and his law
9 firm, you know that?

10 A. Yes.

11 Q. Okay. When did Mr. Hynes
12 become your personal attorney?

13 A. My personal...

14 Q. He's here today representing
15 you; you stated that.

16 A. Okay.

17 Q. When did he become your
18 personal attorney?

19 A. I believe I first spoke with
20 Mr. Hynes in November of -- approximately
21 November of 2018.

22 Q. Okay. That's when you got
23 notice that you were going to have to testify
24 in this case?

25 A. I believe so.

1 Q. You know what this case is
2 about?

3 A. Yes.

4 Q. Okay. You know this is about
5 the national opioid crisis and distributors'
6 roles in that crisis; you understand that?

7 A. Yes.

8 Q. Okay. And you've studied
9 documents in relation to that crisis in
10 preparation for your deposition, have you
11 not?

12 MR. HYNES: Objection to the
13 form. Instruct the witness not to
14 answer to the extent that it gets into
15 prep with counsel.

16 QUESTIONS BY MR. BAKER:

17 Q. Okay. You can tell me what
18 you've reviewed. You can't tell me what your
19 conversation was with your counsel, but you
20 can certainly tell me what you've reviewed.

21 MR. HYNES: And I disagree. I
22 object. He will not tell you what he
23 reviewed. He can tell you he reviewed
24 documents. We're not going to talk
25 about what documents he reviewed.

1 That is protected by work product.

2 MR. BAKER: That, I disagree
3 with. Let's go off record for a
4 second.

13 QUESTIONS BY MR. BAKER:

14 Q. When you left CVS's employment
15 and came to Amazon in Seattle, did you take
16 any CVS documents with you?

17 A. No.

18 Q. Okay. So everything that
19 you've reviewed is something that has been
20 provided by CVS to you to review. Is that
21 correct?

22 MR. HYNES: You can answer that
23 question.

24 A. Yes.

--○○○--

1 QUESTIONS BY MR. BAKER:

2 Q. And Mr. Hynes, the lawyer
3 sitting next to you, provided that to you.
4 Is that right?

5 A. Yes.

6 Q. Okay. Do you have any problem
7 with your memory at all?

8 A. No.

9 Q. Okay. Are you on any
10 medication that would cause you to have a
11 lapse of memory of any type today?

12 A. No.

13 Q. Okay. Do you feel prepared for
14 your deposition today?

15 MR. HYNES: Objection to form.

16 QUESTIONS BY MR. BAKER:

17 Q. Do you feel prepared?

18 A. To the best of my ability.

19 Q. Okay. Let's go to document
20 number 47.

21 (CVS-Burtner Exhibit 47 was
22 marked for identification.)

23 MR. BAKER: Hand him a copy.

24 MR. HYNES: Thank you.

25 --o0o--

1 QUESTIONS BY MR. BAKER:

2 Q. Okay. I've handed you document
3 No. 47. Do you recognize this e-mail, Aaron
4 Burtner, 10/10/12?

5 A. I don't recall sending this
6 document.

7 Q. All right. Let's see if we can
8 get some ground rules here. I'm going to ask
9 you very simple questions, and for instance,
10 this e-mail has your name on it. It's
11 blatantly obvious that it has your e-mail
12 name on it. And throughout this whole
13 litigation -- please look at me.

14 A. Yes.

15 Q. I'm getting a lot of "I don't
16 remember, I may have, I don't know."

17 Well, this is so obvious that
18 you can look at it and just obviously tell
19 the answer, yes, you wrote the e-mail.

20 So this is the question: Did
21 you write this e-mail?

22 MR. HYNES: Objection to the
23 colloquy. The witness said he doesn't
24 recall sending the e-mail.

25 --OOo--

1 QUESTIONS BY MR. BAKER:

2 Q. Okay. Let me explain this to
3 you. You told me you don't have any problem
4 with your memory, correct?

5 A. Yes.

6 Q. Okay. I'm going to ask you
7 very simple questions, and I'm not going to
8 play games all day long about "I don't
9 remember." This has gone on with every
10 single witness in this case. It's because
11 they're meeting with counsel and they're
12 saying "I don't remember."

13 Well, let me tell you
14 something. I'm going to show you documents.
15 I'm going to jog your memory. And I don't
16 want to play games about the "I don't
17 remember" stuff all day long or else we'll be
18 here a long time. Are we clear about that?

19 MR. HYNES: Objection.

20 QUESTIONS BY MR. BAKER:

21 Q. Are we clear?

22 MR. HYNES: Objection.

23 A. Yes.

24 QUESTIONS BY MR. BAKER:

25 Q. Okay. What name is on this

1 e-mail?

2 A. From this e-mail, I can see
3 that it was sent from me.

4 Q. Okay. And you sent it to Pam
5 Hinkle. Who was Pam Hinkle at the time you
6 wrote this e-mail?

7 A. At this time, Pam was a
8 dotted-line supervisor.

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24 QUESTIONS BY MR. BAKER:

25 Q. Okay. Let me see if we can get

1 something straight. I want to ask you very
2 specific questions. I'm not looking for
3 editorial answers.

4 What is the date of today?

5 MR. HYNES: Objection to form.

6 A. January 17th, 2019.

7 QUESTIONS BY MR. BAKER:

8 Q. Okay. The key word in that
9 question was "date," okay? And you answered
10 it. What day is today?

11 A. Thursday.

12 Q. The key word in that question
13 was "day." You picked up on it. You
14 answered it. I appreciate it.

15 What color is the pen I'm
16 handing you right now? What is that color?

17 A. Blue.

18 Q. The key word in that question
19 was "color." So you see we went day, date,
20 color. You understand? So I'm going to ask
21 you questions. I'm going to ask you does the
22 document say that. If the document says
23 that, there's one word, yes. There's not "I
24 don't remember" and all that. So I want to
25 get through this, okay?

1 MR. HYNES: Objection to the
2 colloquy.

3 QUESTIONS BY MR. BAKER:

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20 QUESTIONS BY MR. BAKER:

21 Q. Okay. Your lawyer has a right
22 to say "Objection to form," and pretty much
23 every question that I ask, no matter what,
24 he's going to say those three words. That's
25 fine. He's allowed to do that.

1 That doesn't mean you don't
2 answer, unless he instructs you not to
3 answer. So I don't want you to be thrown off
4 by that. Fair enough?

5 A. That's fair.

6 Q. So if he says "Objection to
7 form," don't think that means don't answer
8 the question. That just means he's trying to
9 reserve an objection so later on if he wants
10 to go to the judge and ask, you know, can we
11 not ask that question, not give that answer,
12 he's preserved that.

13 But as we move through this, I
14 don't want you to hear that, hesitate 10
15 seconds, wait, and then answer, unless that's
16 what you really needed to do to answer the
17 question.

18 In other words, don't hesitate
19 just because he objected. Fair enough?

20 MR. HYNES: He's ready. I'll
21 instruct you not to answer if --

22 QUESTIONS BY MR. BAKER:

23 Q. All right. You ready?

24 A. I am ready.

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MR. BAKER: Okay. Next

1 document. Number 80.

2 (CVS-Burtner Exhibit 80 was
3 marked for identification.)

4 QUESTIONS BY MR. BAKER:

5 Q. All right. This document says
6 it's Aaron Burtner to Crystal Pike. Do you
7 remember who Crystal Pike was?

8 A. Yes.

9 Q. Who was she?

10 A. She was an employee of Analysis
11 Group.

12 Q. Okay. And Analysis Group was
13 what in reference to your job in CVS at the
14 time?

15 MR. HYNES: Objection to form.

16 A. Analysis Group was, I
17 believe -- I believe a consulting firm that
18 we were working with on the SOM process.

19 QUESTIONS BY MR. BAKER:

20 Q. Okay. And before that your
21 company had been working with a company, CCS?
22 Is that right?

23 A. I don't believe I was involved
24 with that.

25 Q. Okay. But you were involved

1 with the Analysis Group communication?

2 A. Yes.

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1 June 26 of 2013, right?

2 A. Correct.

3 Q. Okay. So a total of seven
4 months.

5 A. Yes.

6 Q. And you've not returned to CVS
7 since then, correct?

8 A. No.

9 Q. You've only been in touch with
10 CVS to the extent of this litigation since
11 November of 2018, right?

12 A. Yes, I believe that to be true.

13 Q. And we're in January of 2019
14 right now, correct?

15 A. Correct.

16 MR. BAKER: Okay. Next
17 document, No. 46. Hand him two, he
18 can hand him one. The process is I'll
19 hand you two and then you can hand him
20 one, all right?

21 MR. HYNES: Yeah, that works.

22 (CVS-Burtner Exhibit 46 was
23 marked for identification.)

24 QUESTIONS BY MR. BAKER:

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MR. BAKER: Okay. Next

1 document.

2 MR. HYNES: When you get to a
3 breaking point --

4 MR. BAKER: I'm sorry?

5 MR. HYNES: When you get to a
6 breaking point, can we take a break?

7 MR. BAKER: Okay, sure.

8 The next document would be
9 No. 94.

10 MS. HECKMAN: 44.

11 MR. BAKER: Oh, 44, I'm sorry.

12 (CVS-Burtner Exhibit 44 was marked
13 for identification.)

14 QUESTIONS BY MR. BAKER:

15 Q. So this is an e-mail from Aaron
16 Burtner to Pamela Hinkle, 9/7/12, correct?

17 A. Yes.

18 Q. Okay. Now, at that time, were
19 you already the SOM manager or not?

20 A. Not at that time.

21 Q. At this time you're working as
22 a loss prevention analyst. Is that correct?

23 A. Loss prevention supervisor.

24 Q. Okay. But you were reviewing
25 IRR reports every night. Is that right?

1 A. Every day.

2 Q. Every day.

3 A. Yes.

4 Q. Okay. What time did you get to
5 work in the morning?

6 A. It varied widely throughout the
7 month.

8 Q. Give me an example of what
9 would be a time that you might come to work.

10 A. In the beginning, 7:00 a.m.
11 Towards the end of the month, once the report
12 was larger, 4:00 or 5:00 a.m.

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5 QUESTIONS BY MR. BAKER:

6 Q. Was Paul located -- Paul Lawson
7 located in Knoxville?

8 A. Yes.

9 Q. Okay. He was with Pam Hinkle?

10 A. Yes.

11 Q. That's where Pam Hinkle was,
12 too?

13 A. Yes.

14 Q. You were in Indiana, right?

15 A. Yes.

16 Q. So the two people that were
17 potentially reviewing these item review
18 reports were you and Paul Lawson at the time
19 this memorandum was written, 9/7 of 2012,
20 right?

21 A. That is correct.

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16 QUESTIONS BY MR. BAKER:

17 Q. Okay. Let's go through the
18 document and look at me, please. Look at the
19 camera. Understand a jury is looking at you.

20 So if you say you don't recall,
21 and we've got a whole bunch of documentation
22 that should allow a young man like you to
23 recall something, it's going to sound kind of
24 silly that you say "I don't recall."

25 MR. HYNES: Objection to the

1 colloquy. Let's take a break.

2 QUESTIONS BY MR. BAKER:

3 Q. I want you to look --

4 MR. BAKER: No, we're going to
5 keep going.

6 MR. HYNES: No, we're going to
7 take a break.

8 MR. BAKER: We're going to
9 finish this document. No, we're not.

10 Okay.

11 QUESTIONS BY MR. BAKER:

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20 MR. BAKER: Okay. We'll take a
21 break. Thank you.

22 THE VIDEOGRAPHER: We are now
23 going off the record, and the time is
24 9:42 a.m.

25 (Recess taken, 9:42 a.m. to

1 9:57 a.m.)

2 THE VIDEOGRAPHER: We are now
3 going back on the record, and the time
4 is 9:57 a.m.

5 QUESTIONS BY MR. BAKER:

6 Q. Okay. We're going to
7 Exhibit 37.

8 (CVS-Burtner Exhibit 37 was
9 marked for identification.)

10 QUESTIONS BY MR. BAKER:

11 Q. I'm showing you an e-mail
12 that's exchanged 5/31/2012, correct?

13 A. Yes.

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16 Q. Okay. I'm going to show you
17 Exhibit 97.

18 MR. BAKER: This is from the
19 old 97? It's old 97 because it wasn't
20 on this list, but nevertheless, this
21 is going to be marked 97.

22 MR. HYNES: We have a previous
23 97?

24 MR. BAKER: Yes. This is from
25 a prior deposition, but we're

1 re-marking it 97 here as well.

2 MR. HYNES: Oh, I thought you
3 meant this was used earlier in this
4 deposition. It wasn't.

5 MR. BAKER: No.

6 MR. HYNES: Oh, okay. Okay.

7 (CVS-Burtner Exhibit 97 was
8 marked for identification.)

9 QUESTIONS BY MR. BAKER:

10 Q. All right. Look at Exhibit 97.

11 It should be tabbed for you, a page to go to.

12 Do you see that?

13 A. Yes.

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12 Q. All right. Next document.

13 (CVS-Burtner Exhibit 3 was
14 marked for identification.)

15 QUESTIONS BY MR. BAKER:

16 Q. Now, the law that you were
17 aware of is the Controlled Substances Act
18 that governed your activities as a loss
19 prevention analyst, correct?

20 MR. HYNES: Objection to form.

21 A. I don't -- I don't recall the
22 specific law.

23 QUESTIONS BY MR. BAKER:

24 Q. Well, let me see if we can get
25 you schooled on it.

1 A. Okay.

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6 QUESTIONS BY MR. BAKER:

7 Q. All right. In front of you is
8 21 C.F.R. 1301.74(b). Have you ever seen
9 that law before?

10 A. Umm --

11 Q. Before today, have you ever
12 seen that law in writing?

13 A. I don't specifically recall the
14 number, but I do recall the paragraph, yes.

15 MR. BAKER: Okay. Go back to
16 the other document that I just was
17 reviewing.

18 THE WITNESS: 34?

19 MR. BAKER: Yeah. Strike that.

20 QUESTIONS BY MR. BAKER:

21 Q. Go back to what we were on,
22 please. Go back to the --

23 A. The present?

24 Q. Yeah, the present document,
25 please.

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11 Q. Okay. Let's move to the next
12 document.

13 (CVS-Burtner Exhibit 2 was
14 marked for identification.)

15 QUESTIONS BY MR. BAKER:

16 Q. Now, are you familiar with the
17 drug hydrocodone? We're going to document
18 No. 2.

19 MR. HYNES: Hydrocodone or
20 hydrocodone combination products?

21 MR. BAKER: Hydrocodone
22 combination products, which is
23 inclusive within this document.

24 --oOo--
25 --oOo--

1 A. Hydrocodone -- familiar to what
2 extent?

3 QUESTIONS BY MR. BAKER:

4 Q. Okay. Are you familiar with
5 the addictive nature of it?

6 A. I mean, I wouldn't consider
7 myself to be an expert of hydrocodone, but I
8 do recognize that it is addictive.

9 Q. Thank you.

10 All right. Hydrocodone --
11 according to the DEA Drug Fact Sheet:
12 Hydrocodone is the most frequently prescribed
13 opioid in the United States and is associated
14 with more drug abuse and diversion than any
15 other illicit or illegal opioid.

16 Correct? That's what the DE
17 document said -- DEA document says. Is that
18 correct?

19 A. That's what this document
20 states, yes.

21 Q. And this is one of the drugs
22 that you were monitoring for CVS in terms of
23 their distribution of that particular drug
24 out of a distribution center, a hydrocodone
25 combination product that is out of a

1 distribution center to a pharmacy, correct?

2 A. The hydrocodone combination
3 products were our highest priority drug that
4 we were monitoring.

5 Q. Okay. And if you go down here
6 it says, looks like -- well, the street names
7 for that are Hydro, Norco, Vikes. You've
8 heard of those names, right?

9 MR. HYNES: Objection to form.

10 QUESTIONS BY MR. BAKER:

11 Q. Norco, you've heard of that,
12 right?

13 MR. HYNES: Objection to form.

14 QUESTIONS BY MR. BAKER:

15 Q. Vicodin, you've heard of that,
16 have you not?

17 A. I have heard of hydro and
18 Vicodin.

19 Q. All right. And then it says
20 that the effect on the mind are -- actually,
21 drugs causing similar effects. It says
22 morphine, heroin, oxycodone, codeine,
23 poxy- -- propoxyphene, fentanyl, and
24 hydromorphone, correct?

25 A. According to the document, yes.

1 Q. And you've heard of morphine,
2 you've heard of heroin, right?

3 A. Yes.

4 Q. You've heard of fentanyl,
5 correct?

6 A. Yes.

7 Q. And you're familiar that our
8 country is in a crisis?

9 MR. HYNES: Objection to form.

10 QUESTIONS BY MR. BAKER:

11 Q. You know that, don't you?
12 We're in an opioid crisis, are we not?

13 MR. HYNES: Objection.

14 Objection to form.

15 A. I'm not an expert on any of
16 that. I don't know if --

17 QUESTIONS BY MR. BAKER:

18 Q. Are you going to sit here and
19 tell me that you're not familiar with the
20 fact that our country is in the midst of an
21 opioid crisis? Are you honestly going to
22 look in that camera and say that you're not
23 familiar with that?

24 MR. HYNES: Objection to form.

25 A. No, I understand that there's a

1 problem going on, but to the level of crisis,
2 I don't -- I've been out of this world for
3 six years and I haven't really looked back.

4 QUESTIONS BY MR. BAKER:

5 Q. Okay. We're going to go into
6 the level of that crisis for you. All right?

7 Let me show you another drug
8 that's involved in that crisis called
9 oxycodone. Are you familiar with that drug?

10 A. Yes.

11 Q. Okay. Oxycodone is a
12 semisynthetic narcotic analgesic and
13 historically has been a popular drug of abuse
14 among the narcotic-abusing population.

15 Is that what the document says?

16 MR. HYNES: Can we have a copy?

17 MR. BAKER: Oh, I'm sorry.

18 MR. HYNES: Oh, is it behind
19 here?

20 MR. BAKER: Should have been.

21 MR. HYNES: No, no, no. Hold
22 on. Hold on. It's behind here.

23 MR. BAKER: Okay.

24 MR. HYNES: Sorry, we were
25 confused, though. So it's the next

1 document in the packet he gave us.

2 A. Got it.

3 Yes, that's what the document
4 says, yes.

5 QUESTIONS BY MR. BAKER:

6 Q. Okay. And you knew that before
7 today too, right? It's common knowledge to
8 you, right?

9 A. Yes, that oxycodone is abused.

10 Q. All right. And it has street
11 names of Hillbilly Heroin, Kicker, OC, Ox,
12 Oxy, Perc, Roxy.

13 Did you know that?

14 MR. HYNES: Objection to form.

15 A. I have heard some of those but
16 definitely not most.

17 QUESTIONS BY MR. BAKER:

18 Q. Okay. And oxycodone is
19 marketed alone as OxyContin in 10, 20, 40,
20 and 80 milligram controlled substance release
21 tablets and other immediate-release capsules
22 like 5-milligram Oxy LR is also marketed in
23 combination products with aspirin, such as
24 Percodan, or acetaminophen, such as Roxicet.

25 Is that what the document says?

1 A. Yes, that's what the document
2 says.

3 Q. All right. Look where it says
4 what effects it has on the mind. It says:
5 Euphoria and feelings of relaxation are the
6 most common effects of oxycodone on the
7 brain, which explains its high potential for
8 abuse.

9 Correct?

10 A. That's what it says, yes.

11 Q. All right. And you knew this
12 when you were working at CVS, did you not?

13 MR. HYNES: Objection to form.

14 A. Yes, I knew the -- I recognized
15 the effects of oxycodone.

16 QUESTIONS BY MR. BAKER:

17 Q. And these are the drugs that
18 you knew to be sold by CVS retail stores that
19 were not monitored by CVS's suspicious order
20 monitoring system, correct?

21 MR. HYNES: Objection to form.

22 QUESTIONS BY MR. BAKER:

23 O. Am I correct?

24 MR. HYNES: Objection to form.

25 --○○○--

1 A. Yes.

2 QUESTIONS BY MR. BAKER:

3 Q. All right. Let's go to
4 Exhibit 1, please.

5 MR. LANOSA: This is Mike for
6 McKesson. I'm sorry to interrupt you
7 guys. We're having some connection
8 problems here on the phone. We can
9 hear each other, but we can't hear
10 you. You're cutting in and out.

11 MR. HYNES: Let's go off the
12 record for a minute.

13 THE VIDEOGRAPHER: We are now
14 going off the record, and the time is
15 10:28 a.m.

16 (Recess taken, 10:28 a.m. to
17 10:41 a.m.)

18 (CVS-Burtner Exhibit 1 was
19 marked for identification.)

20 THE VIDEOGRAPHER: We are now
21 going back on the record, and the time
22 is 10:41 a.m.

23 QUESTIONS BY MR. BAKER:

24 Q. You have in front of you
25 Exhibit 1. Is that correct, Mr. Burtner?

1 A. Yes.

2 Q. Okay. You see on the screen
3 Exhibit 1 -- is it not coming up? Yes, there
4 it is. Okay.

5 Up here in the upper left-hand
6 corner you see this is the symbol for the
7 United States Drug Enforcement Agency,
8 correct?

9 A. I believe so, yes.

10 Q. Okay. And you see here where
11 there's a top 10 list in kilograms of
12 consumption of hydrocodone.

13 Do you see that?

14 A. Yes, I see the list.

15 Q. Okay. You see where the United
16 States consumes 99.3% of the hydrocodone in
17 the world?

18 A. Yes, I see that on the
19 document.

20 Q. Okay. You see here on the next
21 document, it says: Poison and deaths from
22 opioid analgesics.

23 A. Yes, I see that.

24 Q. All right. This is -- the
25 source at the bottom is the National Vital

1 Statistics System.

2 Do you see that?

3 A. Yes, I do.

4 Q. Center for Disease Control.

5 Do you see that? CDC?

6 A. Yes, I do.

7 Q. Okay. Go back to the document.

8 Do you see where it talks about this
9 poisoning death from opioid analgesics over a
10 period of 1999 through 2010 are represented
11 by those bar charts?

12 Do you see that?

13 A. Yes, I see that.

14 Q. Do you see a steady climb in
15 that from 1999 all the way up through 2013?

16 Do you see that?

17 MR. HYNES: Objection to form.

18 A. Yes. The document indicates a
19 climb.

20 QUESTIONS BY MR. BAKER:

21 Q. Okay. Do you see that as of
22 the time you were working as a manager in the
23 suspicious order monitoring program at CVS,
24 those deaths were 16,917 in 2011, 16,600 in
25 2012, and 16,200 in 2013?

1 Do you see that?

2 MR. HYNES: Objection, form. I
3 think you got some of the numbers
4 wrong.

5 QUESTIONS BY MR. BAKER:

6 Q. Let me repeat the question,
7 then. When were you the suspicious order
8 monitoring manager?

9 A. I -- the manager, late 2012
10 through mid 2013.

11 Q. And when were you the LP
12 analyst?

13 A. I was performing functions as
14 the LP analyst from early 2012 through late
15 2012 when I became the SOM manager.

16 Q. Okay. So in 2012 alone, do you
17 see that there were 16,000 opioid analgesic
18 deaths in the United States?

19 MR. HYNES: Objection to form.

20 A. Yes. I see that on the
21 document, yes.

22 QUESTIONS BY MR. BAKER:

23 Q. Okay. Do you see that number
24 climb to 16,200 in 2013?

25 MR. HYNES: Objection, form.

1 A. Yes, I see that.

2 QUESTIONS BY MR. BAKER:

3 Q. Have you ever seen this
4 document before today?

5 MR. HYNES: Objection to the
6 extent it calls for him to divulge the
7 documents shown to him during his
8 prep. He may answer as to whether
9 he's seen it outside of his prep with
10 counsel.

11 QUESTIONS BY MR. BAKER:

12 Q. Have you seen this document
13 outside of your prep with counsel before
14 today?

15 A. No, I do not recall seeing this
16 document, no.

17 Q. Before walking in here today,
18 were you familiar with the fact that there
19 were 16,000 deaths per year as a result of
20 opioid analgesics in the year 2012?

21 MR. HYNES: Objection to form.

22 A. No, I was not familiar with the
23 number of deaths.

24 QUESTIONS BY MR. BAKER:

25 Q. Before you walked in here

1 today, were you familiar with the number of
2 deaths reflected on this chart?

3 MR. HYNES: Objection to form.

4 A. No, I was not aware of the
5 number of deaths.

6 QUESTIONS BY MR. BAKER:

7 Q. Let me ask you to pull the next
8 chart up, please. This talks about the U.S.
9 rates of opioid overdose deaths, sales, and
10 treatment admissions from 1999 to 2010.

11 Have you ever seen this
12 document before today?

13 A. No, I do not believe I've ever
14 seen this, no.

15 Q. Okay. Do you understand that
16 the green line on that document represents
17 opioid sales, the red line represents opioid
18 deaths and the blue line represents opioid
19 treatment admissions?

20 Do you see that?

21 A. Yes, I do see that.

22 Q. Okay. The green line is the
23 top line, the red line is the middle line and
24 the blue line is the bottom line, correct?

25 A. Yes.

1 Q. Okay. Do you see where those
2 lines travel in the same direction upward
3 from 1999 to 2010?

4 Do you see that?

5 MR. HYNES: Objection, form.

6 A. Yes. Yes, I see that.

7 QUESTIONS BY MR. BAKER:

8 Q. Do you see the correlation
9 between opioid sales, opioid treatment
10 admissions and opioid deaths pursuant to what
11 that chart represents, yes or no?

12 MR. HYNES: Objection to form.

13 A. Yes, I can see the correlation
14 based on this chart.

15 QUESTIONS BY MR. BAKER:

16 Q. Okay. The more opioids that
17 are sold, the more opioid deaths and the more
18 opioid treatment admissions, according to
19 this chart, correct?

20 MR. HYNES: Objection to form.

21 A. According to this chart, yes.

22 QUESTIONS BY MR. BAKER:

23 Q. Those things run correlating
24 hand in hand with each other on this chart,
25 correct?

1 MR. HYNES: Objection to form.

2 A. According to this chart, yes.

3 QUESTIONS BY MR. BAKER:

4 Q. Okay. From 1999 to 2010,
5 correct?

6 MR. HYNES: Objection to form.

7 A. Yes, those are the years on the
8 chart.

9 QUESTIONS BY MR. BAKER:

10 Q. You understand this is all part
11 of the opioid crisis?

12 MR. HYNES: Objection to form.

13 QUESTIONS BY MR. BAKER:

14 Q. Do you understand that to be
15 part of the opioid crisis?

16 MR. HYNES: Objection to form.

17 A. Yes, I understand that this
18 would be part of the crisis.

19 QUESTIONS BY MR. BAKER:

20 Q. Next document. Let's go to
21 Exhibit 4.

22 (CVS-Burtner Exhibit 4 was
23 marked for identification.)

24 QUESTIONS BY MR. BAKER:

25 Q. This is an e-mail from Mr. Ron

1 Buzzeo to Amy Brown. Have you ever seen this
2 e-mail before?

3 MR. HYNES: Objection to the
4 extent it calls for the witness to
5 divulge documents shown to him in
6 prep. He will answer as to any
7 documents he's seen outside of his
8 prep with counsel.

9 RANDOM CALLER: Hello? Hello?

10 MR. BAKER: Yes.

11 RANDOM CALLER: Hello?

12 MR. BAKER: Yes.

13 MR. HYNES: Can you hear us?

14 MR. BAKER: Can you hear us?

15 RANDOM CALLER: Yeah, so I just
16 called in to the technical support
17 department --

18 MR. BAKER: Let's take a break
19 off the record. Let's take a break
20 off the record.

21 THE VIDEOGRAPHER: Okay. We
22 are now going off the record, and the
23 time is 10:47 a.m.

24 (Recess taken, 10:47 a.m. to
25 10:49 a.m.

4 QUESTIONS BY MR. BAKER:

5 Q. I'm going to hand you
6 Exhibit 5.

(CVS-Burtner Exhibit 5 was
marked for identification.)

9 QUESTIONS BY MR. BAKER:

10 Q. All right. This is an e-mail
11 dated 5/8/2013 from Craig Schiavo to you,
12 Aaron Burtner, correct?

13 A. That is correct.

14 Q. All right. And who was Craig
15 Schiavo in relation to you and CVS at the
16 time?

17 A. He was an employee based in the
18 corporate office, I believe in compliance.

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3 QUESTIONS BY MR. BAKER:

4 Q. All right. Now, you realize
5 that Controlled Substances Act that I showed
6 you, the 21 C.F.R., do you remember that,
7 that I just showed you?

8 A. Yes, sir.

9 Q. Did CVS tell you that that had
10 been in effect since 1971, or not? Did they
11 tell you that?

12 MR. HYNES: Objection to form.

13 A. I don't recall if that was
14 communicated to me or not.

15 QUESTIONS BY MR. BAKER:

16 Q. Were you ever instructed on the
17 fact that that Controlled Substances Act, the
18 21 C.F.R. that I showed you, 1307(b), that
19 that was in effect since 1971? Did anybody
20 at CVS ever instruct you on that?

21 MR. HYNES: Objection to form.

22 A. I was aware of the act, but I
23 don't recall if anyone told me how long it
24 had been in place.

25

--OOo--

1 QUESTIONS BY MR. BAKER:

2 Q. You're aware that it -- you're
3 not aware that it had been in effect way
4 before this letter was written that's
5 attached to this e-mail?

6 MR. HYNES: Objection to form.

7 A. No. I don't know if -- I don't
8 recall if anyone communicated that to me or
9 not.

10 QUESTIONS BY MR. BAKER:

11 Q. But you were the SOM manager,
12 right?

13 A. Yes.

14 Q. And you weren't instructed on
15 that by anybody at CVS?

16 MR. HYNES: Objection to form;
17 misstates his testimony.

18 QUESTIONS BY MR. BAKER:

19 Q. Right?

20 MR. HYNES: Same objection.

21 --OOo--

22 --OOo--

23 --OOo--

24 --OOo--

25 --OOo--

1 A. No, I was -- I was
2 instructed -- I was familiar and instructed
3 on the act, but I don't know if anyone
4 communicated to me how long it had
5 specifically been in --

6 QUESTIONS BY MR. BAKER:

7 Q. Fair enough.

8 A. -- in existence.

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12 Q. Okay. Under this context, in
13 your job at CVS, if a CVS distributor was to
14 report a suspicious order made by a CVS
15 pharmacist, that would be one CVS entity
16 reporting to the DEA on another CVS entity,
17 correct?

18 MR. HYNES: Objection to form.

19 A. I'm not familiar -- I don't
20 know.

21 QUESTIONS BY MR. BAKER:

22 Q. Well, let's take -- let's break
23 that down.

24 A. Okay.

25 Q. CVS owned the distribution

1 center, correct?

2 MR. HYNES: Objection to form.

3 A. I don't know. I viewed it as I
4 worked for CVS. We all worked for CVS. I
5 don't know.

6 QUESTIONS BY MR. BAKER:

7 Q. Right.

8 A. Okay.

9 Q. The distribution center that
10 you worked for, you were paid to work there
11 by CVS, right?

12 A. Correct.

13 MR. HYNES: Objection to form.

14 QUESTIONS BY MR. BAKER:

15 Q. Okay. The pharmacy that you
16 were selling to as a distributor, as a
17 monitoring person for that distributor, that
18 was owned by CVS, right?

19 MR. HYNES: Objection to form.

20 QUESTIONS BY MR. BAKER:

21 Q. Right?

22 MR. HYNES: Objection to form.

23 QUESTIONS BY MR. BAKER:

24 Q. It had a big CVS sign, C-V-S,
25 on it, right?

1 MR. HYNES: Same objection.

2 QUESTIONS BY MR. BAKER:

3 Q. Right?

4 A. I believe so, yes.

5 Q. Okay. And so if you were to
6 tell the DEA as an SOM manager that somebody
7 that was ordering from your distribution
8 center, that being a CVS pharmacy, was
9 ordering something that was a suspicious
10 order, you in effect would be telling the
11 DEA, "Hey, I'm at CVS and another CVS entity
12 that's ordering from me is ordering a
13 suspicious order." Correct?

14 MR. HYNES: Objection to form.

15 QUESTIONS BY MR. BAKER:

16 Q. Isn't that right?

17 MR. HYNES: Same objection.

18 A. I'm not familiar with the term
19 "entity." I'm not sure of the definition --

20 QUESTIONS BY MR. BAKER:

21 Q. Oh, come on.

22 MR. HYNES: Let him finish.

23 --OOO--

24 --OOO--

25 --OOO--

1 A. I don't know the exact
2 definition of it. To me it would be one CVS
3 employee reporting on another CVS employee.

4 QUESTIONS BY MR. BAKER:

5 Q. Fair enough.

6 A. Okay.

7 Q. Okay. So it would be one CVS
8 employee reporting on the conduct of another
9 CVS employee to the DEA, right?

10 A. Agreed.

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9 Q. Okay. And do you know who
10 Amy Brown was when you worked there?

11 A. I'm not familiar with that
12 name.

13 Q. Do you know who Amy Propatier
14 was when you worked there?

15 A. I am familiar with that name.

16 Q. Okay. And do you realize she
17 would be the same person, Amy Brown and Amy
18 Propatier?

19 A. I don't -- I mean, I have no
20 reason not to believe that.

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4 Q. Okay. Exhibit No. 6, please.

5 All right. Go to Exhibit 10.

6 Are you familiar with the
7 history of when CVS first --

8 (Telephonic interruption.)

9 MR. BAKER: Let's go off the
10 record.

11 THE VIDEOGRAPHER: Okay. We
12 are now going off the record, and the
13 time is 11:07 a.m.

14 (Recess taken, 11:07 a.m. to
15 11:08 a.m.)

16 THE VIDEOGRAPHER: We are now
17 going back on the record, and the time
18 is 11:08 a.m.

19 (CVS-Burtner Exhibit 10 was
20 marked for identification.)

21 QUESTIONS BY MR. BAKER:

22 Q. This is Exhibit 10. Go to
23 Exhibit 10.

24 --OOo--

25 --OOo--

1 (Discussion off the
2 stenographic record.)

3 QUESTIONS BY MR. BAKER:

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6 MR. HYNES: Same objection as
7 to prep. He may answer as to whether
8 he read it outside of his prep.

9 A. No, I have never seen this
10 document before.

11 QUESTIONS BY MR. BAKER:

12 Q. Okay. Did CVS show you this
13 while you were working there?

14 A. I do not recall seeing this
15 document, no.

16 Q. All right. Go down to the
17 bottom

18 MR HYNES: The first page?

19 QUESTIONS BY MR BAKER:

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20 (Discussion off the
21 stenographic record.)

22 MR. BAKER: There's been an
23 interruption of people calling in.

24 This is why I'm a little agitated, so
25 we're going to go off record.

9 QUESTIONS BY MR. BAKER:

The image shows a dark gray rectangular background. Along the left edge, there are white numerical labels from 10 to 25, each on a separate line. The labels are positioned such that they are aligned with the vertical center of each column.

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4 QUESTIONS BY MR. BAKER:

5 Q. Okay. All right. Go to
6 Exhibit 11, please.

7 (CVS-Burtner Exhibit 11 was
8 marked for identification.)

9 (Discussion off the
10 stenographic record.)

11 QUESTIONS BY MR. BAKER:

12 Q. All right. This is the CVS SOM
13 Revised Coefficients. Do you remember me
14 talking to you earlier in the retunement
15 document about the initial program being
16 delivered in December of 2008?

17 Do you remember that?

18 A. Yes, I do.

19 Q. Okay. And do you remember that
20 document talking about that there was a
21 perception -- that there was perceived some
22 issues with CVS?

23 Do you remember that?

24 A. Yes, I remember the document.

25 Q. And that there was a change in

1 the coefficients? Do you remember that?

2 A. I don't recall it stating the
3 coefficients were changed.

4 Q. Okay. I want you to assume
5 that's what the document said, okay?

6 MR. HYNES: Objection to the
7 hypothetical.

8 QUESTIONS BY MR. BAKER:

9 Q. All right. Go back to the
10 document, then. Go back to the previous
11 document. What number was it? What number
12 was the --

13 A. No. 10.

14 Q. -- retunement? No. 10.

15 A. Okay.

16 Q. All right. Go to the bottom of
17 page 1.

18 A. Yes, sir.

19 Q. Go back to No. 10, please, the
20 first page.

21 MR. HYNES: Of the retunement
22 or the e-mail?

23 MR. BAKER: The retunement
24 document --

25 MR. HYNES: Okay.

1 MR. BAKER: -- that has the
2 history. Go to the second page,
3 please. All right.

4 QUESTIONS BY MR. BAKER:

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15 and control drugs.

16 Do you see that?

17 A. I see that.

18 Q. Okay. Control drugs reported
19 on IRR by active ingredient.

20 Do you see that?

21 A. I see that.

22 Q. That's what was discussed in
23 the retunement document that I just showed
24 you from 2011, correct?

25 A. Yes. I didn't realize that

1 document was from 2011.

2 Q. Okay, fair enough. All right.

3 So historically you now understand what went
4 on with respect to when the program was
5 delivered, how the coefficients were changed
6 and how the document was retuned in 2011.

7 Do you understand that --

8 MR. HYNES: Objection to form.

9 QUESTIONS BY MR. BAKER:

10 Q. -- from those documents now?

11 MR. HYNES: Objection to form.

12 A. Based on what we reviewed, it
13 appears there were retunements. I have no
14 reason to believe that that's not true.

15 QUESTIONS BY MR. BAKER:

16 Q. Okay. All right. Next
17 document.

18 MR. HYNES: Can we break when
19 you have a minute, though?

20 MR. BAKER: Sure.

21 MR. HYNES: You can do this. I
22 mean, whenever it's a convenient time.

23 MR. BAKER: Now is a convenient
24 time.

25 THE VIDEOGRAPHER: Okay. We

1 are now going off the record, and the
2 time is 11:32 a.m.

3 (Recess taken, 11:32 a.m. to
4 11:40 a.m.)

5 THE VIDEOGRAPHER: We are now
6 going back on the record, and the time
7 is 11:40 a.m.

8 QUESTIONS BY MR. BAKER:

9 Q. Pull document 22, please.

10 (CVS-Burtner Exhibit 22 was
11 marked for identification.)

12 QUESTIONS BY MR. BAKER:

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10 Q. All right. Was Mr. Lawson an
11 LP analyst?

12 (Telephone interruption.)

13 A. Yes, I believe that was his
14 position.

15 QUESTIONS BY MR. BAKER:

16 Q. All right. We're going to go
17 back on the record and reask that same
18 question.

21 A. Yes, I believe that was his
22 position.

23 Q. And were you a loss prevention
24 analyst at that time?

25 A. Technically, loss prevention

1 supervisor but performing some tasks of a
2 loss prevention analyst.

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3 Q. Let me ask you something. As
4 an LP analyst and a suspicious order
5 monitoring manager during your period at
6 CVS -- those were the two positions that you
7 held, correct?

8 A. Technically, loss prevention
9 supervisor and SOM manager, yes.

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14 (Telephonic interruption.)

15 MR. BAKER: Let's go off the
16 record for a second.

17 THE VIDEOGRAPHER: We are now
18 going off the record, and the time is
19 12:05 p.m.

20 MR. BAKER: Go back on the
21 record.

22 (Recess taken, 12:05 p.m. to
23 12:05 p.m.)

24 THE VIDEOGRAPHER: We are now
25 going back on the record, and the time

1 is 12:05 p.m.

2 QUESTIONS BY MR. BAKER:

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13 A. Yes, that was my understanding.

14 MR. BAKER: This would probably
15 be a good place to -- is our lunch
16 here?

17 MR. GOETZ: I don't think so.

18 MR. BAKER: Okay. If it's not,
19 then let me take just a 30-second
20 break.

21 MR. HYNES: Yeah, yeah, that's
22 fine.

23 THE VIDEOGRAPHER: We are going
24 off the record, and the time is
25 12:10 p.m.

1 (Recess taken, 12:10 p.m. to

2 12:11 p.m.)

3 THE VIDEOGRAPHER: We are now

4 going back on the record, and the time

5 is 12:11 p.m.

6 QUESTIONS BY MR. BAKER:

7 Q. Please pull Exhibit 23.

8 (CVS-Burtner Exhibit 23 was

9 marked for identification.)

10 QUESTIONS BY MR. BAKER:

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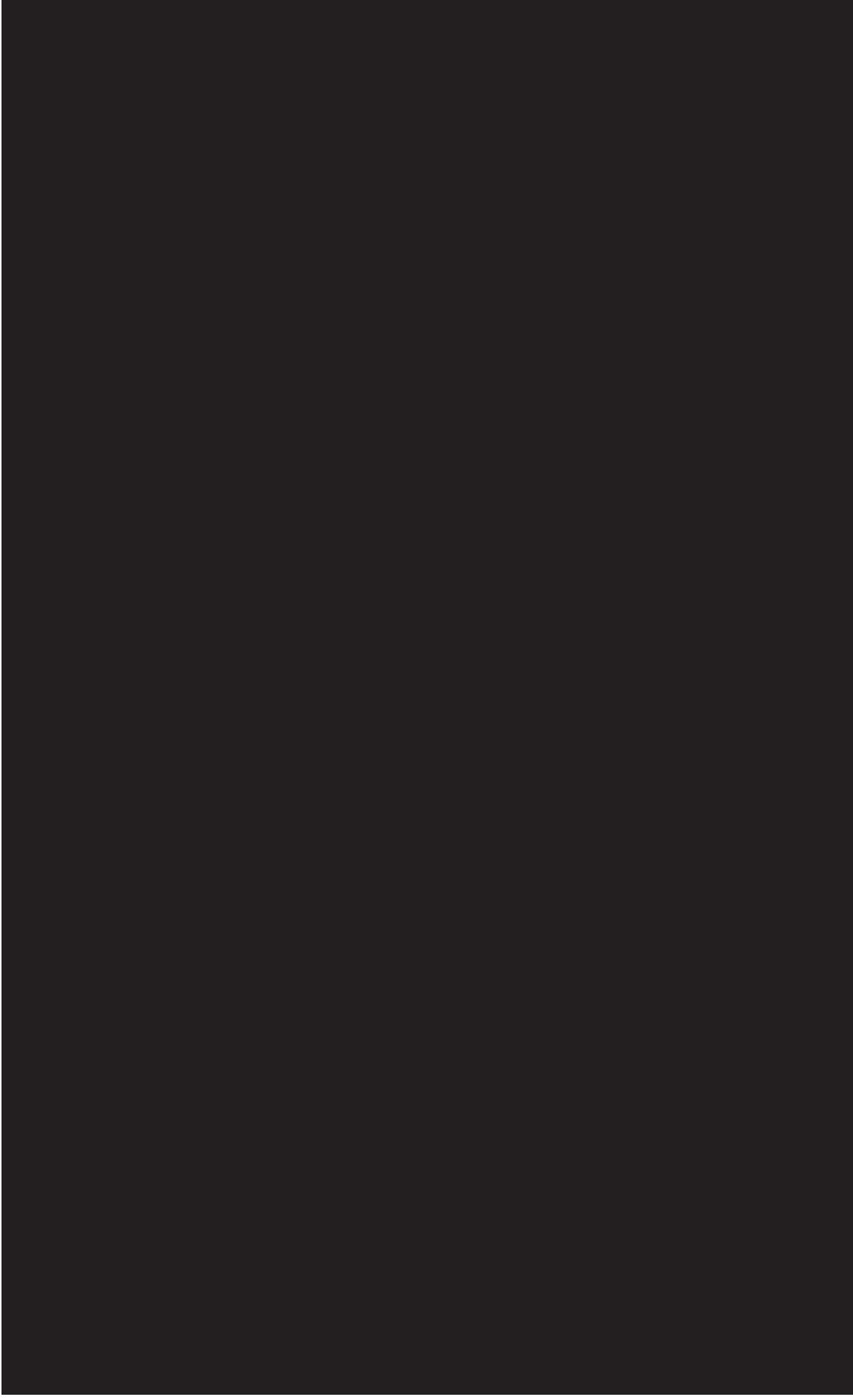
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8 Q. All right. Exhibit 25.

9 (CVS-Burtner Exhibit 25 was
10 marked for identification.)

11 QUESTIONS BY MR. BAKER:

12 Q. This is yet another e-mail, May
13 of 2011. And let me ask you to look at the
14 Bates numbers at the bottom. Do you see
15 where these are stamped? Look at the Bates
16 numbers.

17 MR. HYNES: These numbers right
18 here.

19 A. Okay.

20 QUESTIONS BY MR. BAKER:

21 Q. All right. This is 57736. The
22 next one is 57737. Do you see it?

23 A. Yes, sir.

24 Q. The next one is 577- --
25 actually -- yeah.

1 MR. HYNES: Then the next one
2 is off.

3 QUESTIONS BY MR. BAKER:

4 Q. Wait a minute. 57736, 57737,
5 and 57738. Do you see that?

6 A. Yes, I do.

7 Q. Okay. Let's take a look at
8 this, all right? It says from Frank Devlin
9 to Judith Hughes on the front. Do you see
10 that?

11 A. Yes, I do.

12 Q. All right. That's 5/16/2011,
13 that's May of 2011, correct?

14 A. Yes.

15 (Telephonic interruption.)

16 MR. HYNES: Is everyone still
17 on the line?

18 Let's go off the record.

22 (Recess taken, 12:19 p.m. to
23 1:01 p.m.)

24 THE VIDEOGRAPHER: We are now
25 going back on the record, and the time

1 is 1:01 p.m.

2 QUESTIONS BY MR. BAKER:

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21 Q. But the only time you would
22 look at outside vendor data is when you were
23 doing a deep dive, right?

24 A. Yes, that is correct.

25 Q. So you wouldn't know whether

1 somebody had ordered from an outside vendor
2 in addition to what shows up on your IRR
3 report as what they've ordered, unless you
4 did a deep dive, right?

5 MR. HYNES: Objection to form.

6 QUESTIONS BY MR. BAKER:

7 Q. Right?

8 MR. HYNES: Same objection.

9 A. Yes, that is correct.

10 QUESTIONS BY MR. BAKER:

11 Q. Because the outside vendor
12 orders were not run through the SOM algorithm
13 system at CVS, right?

14 A. No, they were not.

15 Q. Okay. And that included
16 outside vendor orders for Control IIIs and
17 Control IIs, right? For hydrocodone
18 combination products and for OxyContin
19 products, correct?

20 A. Yes, that is correct.

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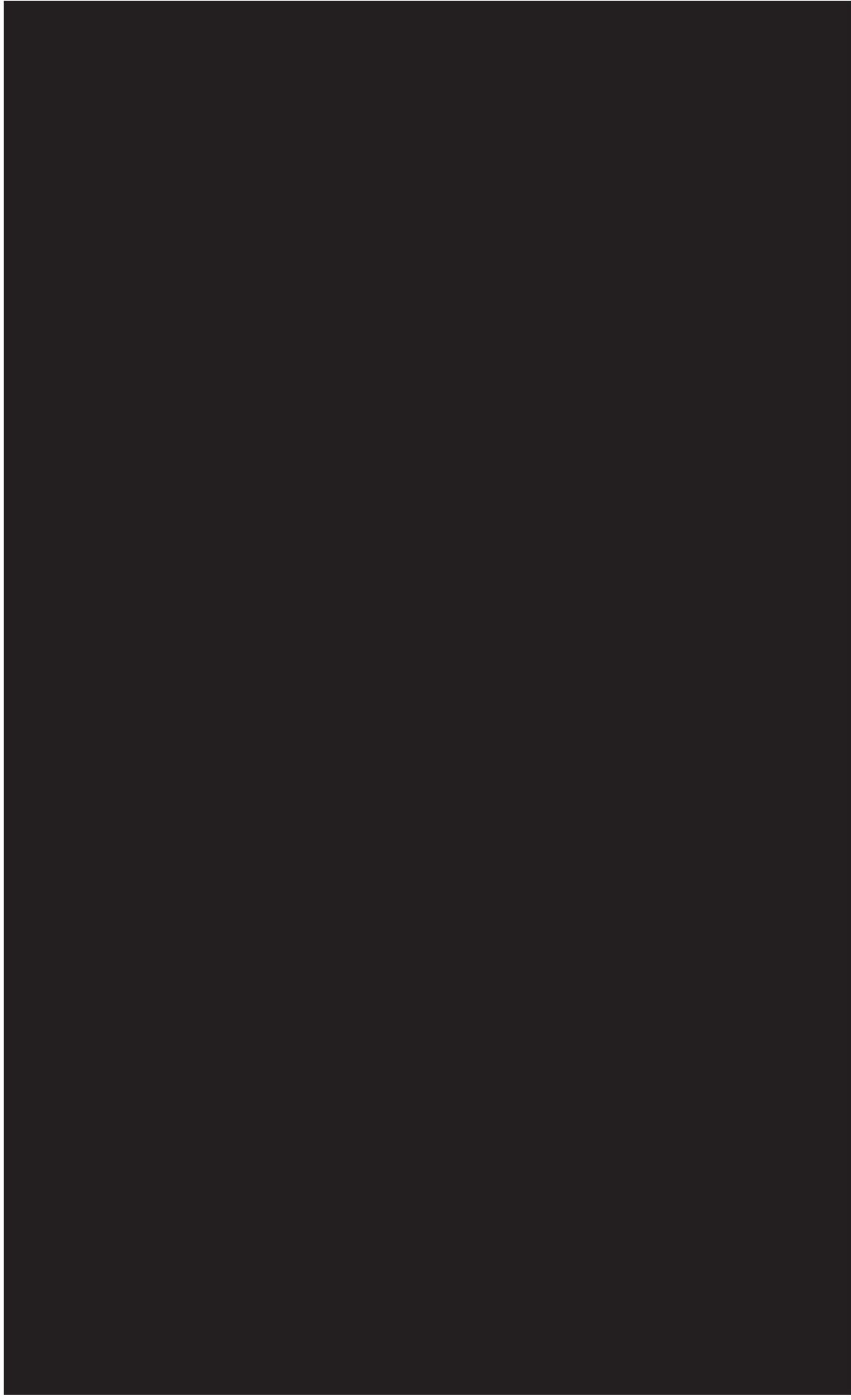
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9 MR. BAKER: Okay. All right.

10 I think we're going to take a break.

11 Thank you.

12 THE VIDEOGRAPHER: Okay. We
13 are now going off the record, and the
14 time is 2:08 p.m.

15 (Recess taken, 2:08 p.m. to
16 2:19 p.m.)

17 THE VIDEOGRAPHER: We are now
18 going back on the record, and the time
19 is 2:19 p.m.

20 EXAMINATION

21 QUESTIONS BY MR. GOETZ:

22 Q. Mr. Burtner, my name is Dan
23 Goetz. We met earlier but now we're formally
24 meeting on the record.

25 I am going to hand you two

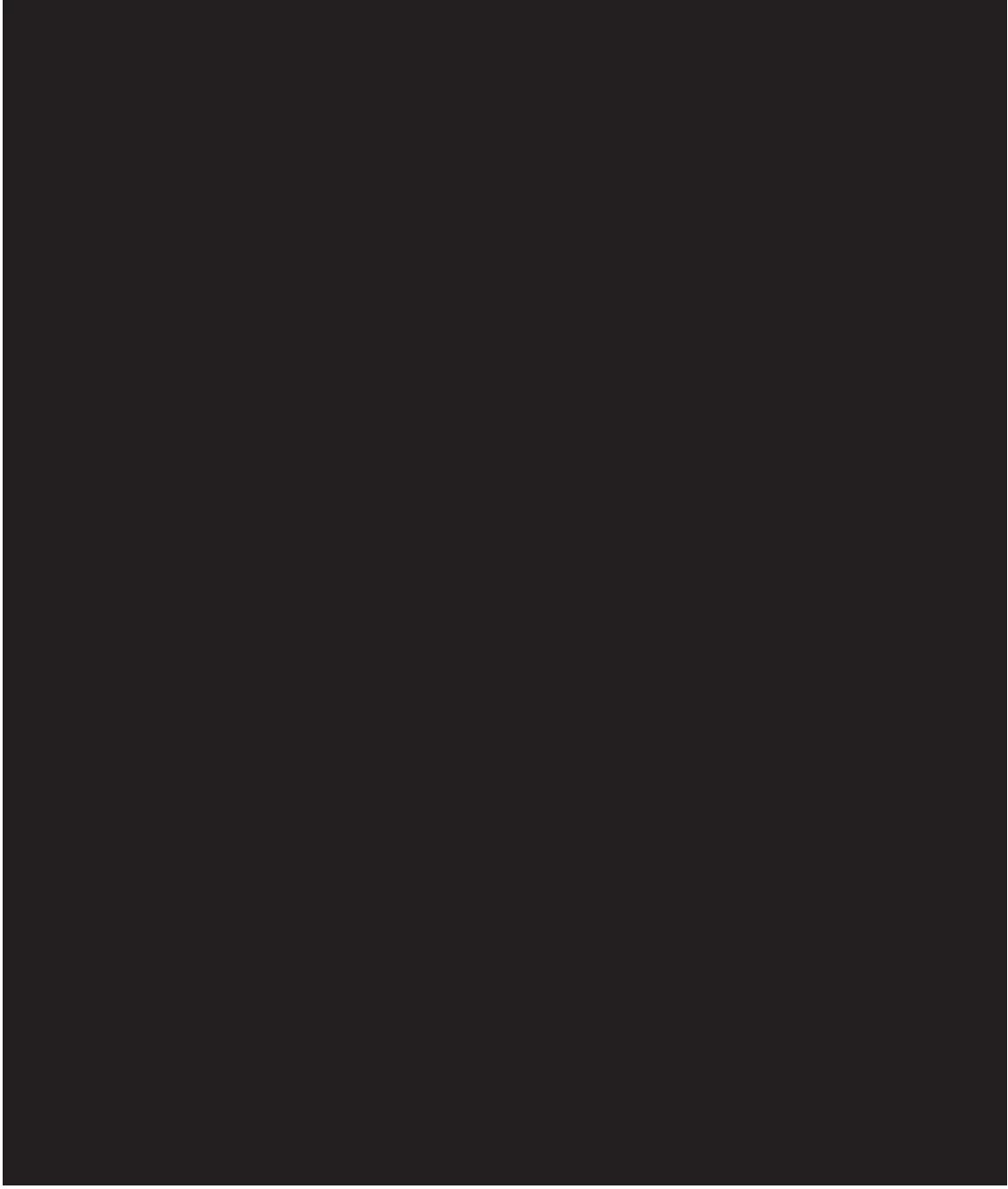
1 exhibits. One is marked CVS-Burtner 462 and
2 one is marked CVS-Burtner 406.

3 (CVS-Burtner Exhibit 462 was
4 marked for identification.)

5 (CVS-Burtner Exhibit 406 was
6 marked for identification.)

7 QUESTIONS BY MR. GOETZ:

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1 QUESTIONS BY MR. GOETZ:

2 Q. Mr. Burtner, you were asked
3 earlier what percentage of orders you did a
4 deep dive on.

5 Do you remember that?

6 A. I do recall the questioning.

7 Q. And do you remember you said
8 you don't recall?

9 A. Yes, that is correct.

10 Q. And so as you sit here today,
11 you don't have a recollection?

12 A. I don't recall how many orders
13 or the percentage of orders that were on the
14 IRR that we would do additional due diligence
15 on.

16 Q. Okay. And there was a time
17 when you did time studies, correct?

18 A. Yes, that is correct.

19 Q. And those time studies were
20 studies to try to gauge what was your average
21 day. Fair?

22 MR. HYNES: Objection to form.

23 A. Yes. Yes.

24 QUESTIONS BY MR. GOETZ:

25 Q. And you filled those time

1 studies out truthfully?

2 A. Yes, to the best of my ability.

3 Q. You filled them out accurately?

4 A. Yes.

5 Q. And so those time studies would
6 probably be the best evidence that we have as
7 to what your day consisted of when you
8 were -- strike that.

9 Those time studies would
10 probably be the best evidence we have as to
11 what percentage of orders you did a deep dive
12 on, correct?

13 MR. HYNES: Objection to form.

14 A. Possibly.

15 QUESTIONS BY MR. GOETZ:

16 Q. I'm going to hand you what has
17 been marked --

18 A. Okay.

19 Q. -- as Exhibit 411.

20 (CVS-Burtner Exhibit 411 was
21 marked for identification.)

22 QUESTIONS BY MR. GOETZ:

23 Q. Do you see the first page?

24 A. Of the e-mail?

25 Q. Yes.

1 A. Yes, I do.

2 Q. And that is an e-mail from you
3 to John Mortelliti?

4 A. Yes.

5 Q. And it's attaching -- it was
6 sent on June 18th of 2012?

7 A. Yes.

8 Q. And then if you'd turn in to
9 the -- what is the third page, it says "LP
10 Analyst Time Study"?

11 A. Yes.

12 Q. Okay. And that date is
13 6/15/12?

14 A. Yes, it is.

15 Q. And if you look about the
16 middle of the page, it says: Review 6/14/12
17 Control IRR?

18 A. Yes, I see that.

19 Q. Okay. And just so we do not
20 have to go back and forth through this all
21 the time, I'm going to write this down so we
22 can kind of remember, okay? And then to the
23 extent that we have to go back, we'll look at
24 it. Fair enough?

25 A. Okay.

1 Q. So that date of the time study
2 is 6/15/12 and it's a 6/14/12 IRR and it
3 appears that it took you 25 minutes to
4 review?

5 A. Yes. Yes, that's what the time
6 study says.

7 Q. Okay. And then down below, it
8 says: Continue reviewing 6/14/12.

9 And that took you 30 minutes,
10 correct?

11 A. Yes. So it appears that I
12 began reviewing and then continued reviewing,
13 a total of, what, an hour, I guess.

14 Q. 55 minutes?

15 A. Okay.

16 Q. Does that seem fair?

17 A. Yes. Yes.

18 Q. And according to this, zero
19 orders received additional due diligence,
20 correct?

21 A. According to the time study,
22 yes.

23 Q. Okay. And could you go to the
24 next page. Actually, on this day you spent
25 an hour looking at a cigarette shortage,

1 correct?

2 A. Yes.

3 Q. Okay.

4 A. I'm sorry.

5 MR. HYNES: What page are you
6 on, Dan?

7 MR. GOETZ: The next page.

8 QUESTIONS BY MR. GOETZ:

9 Q. Worked with Andy Eck on
10 cigarette shortage.

11 A. Oh. Yes, I did, yes.

12 Q. All right. So you were doing a
13 significant amount of other stuff besides
14 SOM.

15 And then it looks down below --
16 it says: Worked with Joe Scholl on petty
17 cash, and you spent an hour and a half on
18 that day. Correct?

19 A. Yes.

20 (CVS-Burtner Exhibit 412 was
21 marked for identification.)

22 QUESTIONS BY MR. GOETZ:

23 Q. I'm going to hand you what has
24 been marked as 412. Do you see the first
25 page?

1 A. Yes.

2 Q. That is an e-mail from you to
3 Mr. Mortelliti dated June 19th, 2012?

4 A. Yes.

5 Q. And if you open it up, that is
6 a time study from June 18th, 2012, correct?

7 A. Yes.

8 Q. Okay. And if you look at the
9 6/15/12 Control IRR, it says review, it looks
10 like you spent 30 minutes?

11 A. According to the time study,
12 yes.

13 Q. Okay. And you investigated, it
14 appears, zero orders.

15 MR. HYNES: Objection to form.

16 A. According to the time study,
17 yes.

18 QUESTIONS BY MR. GOETZ:

19 Q. Okay. Do you see the next
20 page, it says zero orders?

21 A. Yes.

22 Q. Okay. And then if you look at
23 Review 6/17/12.

24 Do you see that?

25 A. Yes, I see that.

1 Q. Okay. And how long did that
2 take you?

3 A. From 8:45 to 9:20, so 35
4 minutes.

5 Q. Okay. And how many orders, if
6 you look at the next page, did you review --
7 did you do a deep dive on?

8 A. One.

9 Q. One. And that deep dive, how
10 long did it take you to do that?

11 MR. HYNES: Objection to form.

12 A. According to the time study, 30
13 minutes.

14 QUESTIONS BY MR. GOETZ:

15 Q. You have no reason to suspect
16 that this time study is anything but
17 accurate, do you?

18 A. No, I don't -- I mean, clearly
19 looking at the times I wasn't going to the
20 minute, but I was rounding to the closest
21 five-minute, I suppose. But beyond that,
22 yes. No, I don't have any reason to question
23 the accuracy.

24 Q. And then if you could go to
25 112651, again, on this day, if you look at

1 the second-to-last entry, you're working with
2 Joe Scholl for 50 minutes, again trying to
3 resolve a petty cash issue. Correct?

4 A. Yes. According to that time
5 study, that is correct.

6 Q. These first -- do you see the
7 last entry?

8 A. Yeah, I do, I'm sorry. I was
9 just looking to see -- I was just trying to
10 see if it was the same day.

11 (CVS-Burtner Exhibit 413 was
12 marked for identification.)

13 QUESTIONS BY MR. GOETZ:

14 Q. Let me show you what's been
15 marked as 413. That first e-mail is dated
16 June 21st, 2012?

17 A. Yes.

18 Q. And it's from you to John
19 Mortelliti, correct?

20 A. Yes.

21 Q. And if you open it up, it's a
22 6/20/12 time study?

23 A. Yes.

24 Q. And if you look at -- it says:
25 Review 6/19/12 Control IRR.

1 Correct?

2 A. Yes.

3 Q. And you spent one hour,
4 correct?

5 A. Yes.

6 Q. And it appears that you
7 investigated three orders.

8 A. Yes, according to that time
9 study.

10 Q. Okay. And how long did it take
11 you to investigate order 5408 -- store 5408?

12 MR. HYNES: Objection to form.

13 A. According to this, 25 minutes.

14 QUESTIONS BY MR. GOETZ:

15 Q. And what did you do?

16 A. That would include deep diving,
17 as we've discussed, looking at order pattern,
18 common doctor, common patient, et cetera.

19 Q. Those are the things that
20 Mr. Baker just asked you about that are
21 things that do not show up on the IRR,
22 correct?

23 A. Yes, that is correct.

24 Q. If you actually want to
25 investigate an order as potentially

1 suspicious, you have to do those things,
2 correct?

3 MR. HYNES: Objection to form.

4 A. Yes. If we identify an order
5 that we feel looks irregular and we need to
6 deep dive further, yes, we would need to
7 access other systems to get that information.

8 QUESTIONS BY MR. GOETZ:

9 Q. And could you look at
10 Store 8980?

11 A. Yes.

12 Q. You investigated an order,
13 correct?

14 A. Yes.

15 Q. How long did that take?

16 A. Approximately 20 minutes.

17 Q. And again, what did you do?

18 A. Followed the same process. It
19 was the same process for every store that we
20 would -- primarily the same process, up to
21 and including calling the pharmacy.

22 Q. When you did call the pharmacy,
23 that would take significantly more time than
24 the 20 minutes, wouldn't it?

25 MR. HYNES: Objection. More --

1 objection to form.

2 A. Not necessarily. The time
3 would vary depending on what I needed to ask
4 the pharmacist.

5 QUESTIONS BY MR. GOETZ:

6 Q. Do you remember how long it
7 would take you?

8 A. I don't recall. It varied from
9 order to order or from store to store.

10 Q. I did this chart, and it's too
11 difficult to put in front of the ELMO, but I
12 just want to make sure that the summary is
13 correct for this.

14 We looked at four IRR dates,
15 correct?

16 A. Yes.

17 Q. When you reviewed the IRRs, you
18 took between 30 minutes and an hour?

19 MR. HYNES: Objection. Are you
20 asking him what the document says or
21 what his recollection is?

22 MR. GOETZ: I'm asking if this
23 is -- if I wrote this down correctly.

24 QUESTIONS BY MR. GOETZ:

25 Q. Do you remember this?

1 MR. HYNES: From the document?

2 MR. GOETZ: Yeah. I was

3 writing as we were speaking.

4 A. Yes, I believe so. I believe
5 that's the information from the time study.

6 QUESTIONS BY MR. GOETZ:

7 Q. From the time studies.

8 And twice you reviewed, of
9 these, zero orders, and one time you reviewed
10 one order, and one time you reviewed three
11 orders, correct?

12 A. Right. And one thing to keep
13 in mind is that the volume of the IRR would
14 vary pretty wildly, especially at the
15 beginning and the middle of the month where
16 it would be relatively small.

17 Q. Do you -- well, these are not,
18 by the way -- do you know how long these IRRs
19 were?

20 A. No specific days. I have no
21 idea.

22 Q. Well, let me ask you. Based
23 upon the fact that you reviewed an IRR in 55
24 minutes from 6/14/12 and you flagged zero
25 orders, what would be your guess?

1 MR. HYNES: Objection; calls
2 for speculation.

3 MR. GOETZ: He just testified
4 that the IRR differences -- when I
5 asked him about if he reviewed zero
6 orders he said, yes, but those are
7 from the middle -- the middle of the
8 month, as though he had some knowledge
9 as to what this would show.

10 MR. HYNES: He just said it was
11 shorter, and you asked him then how
12 long it was, and he said he doesn't
13 know.

14 A. I don't remember the specific
15 number of how long it would be. I know that
16 it was drastically smaller than what it would
17 be at the end of the month.

18 QUESTIONS BY MR. GOETZ:

19 Q. Okay. Would it shock you if I
20 told you some of these were a couple hundred
21 pages?

22 MR. HYNES: Objection to form.

23 A. I don't know. I don't know if
24 it would shock me or not.

25 --o0o--

1 QUESTIONS BY MR. GOETZ:

2 Q. I was just trying to understand
3 when you were telling me that these were from
4 the middle, what that meant to you.

5 A. To what I understand.

6 Q. Mr. Burtner, I'm going to hand
7 to you what has been marked as 414.

(CVS-Burtner Exhibit 414 was
marked for identification.)

10 QUESTIONS BY MR. GOETZ:

11 Q. That front e-mail is an e-mail
12 from you to Pam Hinkle, correct?

13 A. Yes.

14 Q. Dated July 6 of 2012?

15 A. Yes.

16 Q. Okay. And if you turn on the
17 second page, that is a time study from
18 July 5th of 2012, correct?

19 A. Yes.

20 Q. And if you look at the

21 July 3rd, '12 Control IRR, that took you 15
22 minutes, correct, to review?

23 A. Yes.

24 Q. And if you look at the
25 July 4th, 2012 IRR, that took you 2

1 correct?

2 A. Yes.

3 Q. And again, you reviewed zero
4 orders on both days, correct?

5 MR. HYNES: Objection to form.

6 A. According to the time study,
7 yes.

8 QUESTIONS BY MR. GOETZ:

9 Q. All right. In fact, we'll use
10 your language, zero orders for additional due
11 diligence, correct?

12 A. That is correct.

13 Q. Okay. And could you turn to
14 the second page?

15 A. Yes.

16 MR. HYNES: Of the time study?

17 MR. GOETZ: Yes.

18 QUESTIONS BY MR. GOETZ:

19 Q. Again, on this day, you spent
20 three hours, look at the bottom, researching
21 a cigarette shortage?

22 A. Yes. At this time I was still
23 working as a loss prevention supervisor, so
24 at the beginning of the month a large portion
25 of my time would be devoted to loss

1 prevention work.

2 Q. It would not be devoted to
3 suspicious orders, would it?

4 A. A portion of my time, but we
5 also had Paul, who was full time at that time
6 as well.

7 Q. You keep mentioning Paul.
8 There was a big issue about Paul's
9 performance, wasn't there?

10 MR. HYNES: Objection to form.

11 A. Not that I'm aware of.

12 QUESTIONS BY MR. GOETZ:

13 Q. You don't remember those
14 e-mails?

15 A. No. I --

16 Q. Okay.

17 A. I thought Paul was doing a fine
18 job at analyzing the data.

19 Q. Okay. I'm going to hand you
20 what has been marked as 415.

21 (CVS-Burtner Exhibit 415 was
22 marked for identification.)

23 QUESTIONS BY MR. GOETZ:

24 Q. That front page is an e-mail
25 from you to Pam Hinkle?

1 A. Correct.

2 Q. And on the inside it attaches a
3 time study from July 9th, 2012, and then I
4 will tell you it attaches other ones as well.

5 A. Okay.

6 Q. Okay? And that's kind of
7 indicative from what's shown in the e-mail.

8 A. Uh-huh.

9 Q. We'll start with the July 9th
10 of 2012. On that day you reviewed an IRR
11 from July 6 of 2012?

12 A. Yes.

13 Q. You spent 35 minutes?

14 A. Yes.

15 Q. Zero orders for additional deep
16 dive, correct?

17 A. According to the time study,
18 yes.

19 Q. All right. On that day you
20 also reviewed an IRR from July 8th?

21 A. Yes.

22 Q. You spent 40 minutes?

23 A. Yes.

24 Q. And again, you flagged for
25 additional due diligence zero orders.

1 A. Yes.

2 Q. Could you go to the third page
3 of that where it begins "Retrieve 7/10/12 IRR
4 from Data Room"?

5 MR. HYNES: What Bates number,

6 Dan? Oh, we don't have it. Sorry.

7 QUESTIONS BY MR. GOETZ:

8 Q. Keep going.

9 A. Okay. I've retrieved which?

10 Q. On the third line down, it says
11 "Retrieve 7/10/12 IRR"?

12 A. Got it.

13 Q. Okay. And that took 15
14 minutes, correct?

15 A. Yes.

16 Q. And then it says: Organize and
17 file IRR.

18 And that took 15 minutes?

19 A. Yes.

20 Q. I mean, you're spending almost
21 as time [sic] grabbing the IRR and putting it
22 in the box as you are in any form of review
23 of these orders, correct?

24 MR. HYNES: Objection to form.

25 A. Retrieving the IRR was on the

1 opposite side of the building so I had to
2 walk there from my office to get to it and
3 back, which would be approximately a
4 15-minute walk round trip. And then the
5 organizing of the file, I mean, I can't speak
6 to specifically what happened this day, but
7 something may have come up to cause it to
8 take a little bit longer; if I had a phone
9 call or an e-mail or something I responded to
10 in the middle, I don't know.

11 QUESTIONS BY MR. GOETZ:

12 Q. That time, though, was a normal
13 time. It would take you 15 to 30 minutes to
14 take the IRR and organize it. We can go
15 through these again.

16 MR. HYNES: Objection to form.

17 A. I don't recall if that's a
18 normal time or not. I don't have any reason
19 to not believe that it took me 15 minutes
20 this day.

21 QUESTIONS BY MR. GOETZ:

22 Q. Okay. And on some of these
23 days you took 15 minutes to review the IRR,
24 right? You took less, sometimes, to actually
25 do the work than to actually go and have it

1 printed and put it in the box.

2 A. I can't speak to the quantity
3 of orders that were on the IRR for those
4 times either.

5 COUNSEL ON PHONE: Hello?

6 MR. GOETZ: Hello.

7 QUESTIONS BY MR. GOETZ:

8 Q. The page numbers of the IRR,
9 the total pages, would give us a very good
10 indication of the quantity of orders on the
11 IRR, correct?

12 A. Yes, I believe so.

13 Q. Okay. So, for example, I've
14 seen some IRRs from 2012 with three orders
15 per page and I've seen some from 2011 with
16 five orders per page.

17 Are you aware of that?

18 MR. HYNES: Objection to form.

19 A. I don't recall a time where
20 there was different orders, different
21 quantities of orders per page.

22 QUESTIONS BY MR. GOETZ:

23 Q. Do you remember how many there
24 were in 2012?

25 A. I'm sorry, how many of what?

1 Q. How many orders per page in
2 2012.

3 A. I don't.

4 Q. Did we look at 407?

5 MR. HYNES: Yeah, we did.

6 QUESTIONS BY MR. GOETZ:

7 Q. Could you go back to that.

8 Could you look at 11385, and you'll see
9 there's two -- two orders up top and then
10 what appears to be one blacked out? Does
11 that refresh your recollection that there's
12 three pages per order? Three orders per
13 page.

14 A. Yes, in this IRR it does appear
15 that there would be three orders per page.

16 Q. So, again, if we know how many
17 pages an IRR was, we have a really good
18 idea -- we can make a really good estimate
19 how many orders were on that, correct?

20 MR. HYNES: Objection to form.

21 A. Orders of all Schedule III, IVs
22 and Vs, yes.

23 QUESTIONS BY MR. GOETZ:

24 Q. Everything you were supposed to
25 review, correct?

1 A. Yes. Yes.

2 Q. Right. So everything on that
3 IRR, not just hydrocodone combination
4 products, you were supposed to review
5 everything that showed up on that IRR.

6 A. Yes. Every order that came
7 through on the IRR, we did the initial due
8 diligence.

9 Q. Could you go to, within that,
10 it says: Document produced in native format,
11 and that's 112683.

12 MR. HYNES: Which exhibit?

13 MR. GOETZ: We are on 415.

14 MR. HYNES: That's the one you
15 were using -- it's the last one we
16 were using.

17 THE WITNESS: Yes. Which page?

18 MR. HYNES: 116283?

19 MR. GOETZ: 112683.

20 QUESTIONS BY MR. GOETZ:

21 Q. And that is a time study from
22 7/12 of '12?

23 A. Yes.

24 Q. And that day you reviewed the
25 IRR dated July 11th, 2012?

1 A. Yes.

2 Q. You spent 35 minutes?

3 A. According to the time study,
4 yes.

5 Q. And you investigated one order
6 for additional due diligence, correct?

7 A. According to this study, yes.

8 Q. Okay. And that was an order
9 for store 2438?

10 A. Yes. That does appear to be
11 2438.

12 Q. Okay. And again, to
13 investigate that order you took 20 minutes.

14 A. Yes, approximately 20 minutes.

15 Q. Again, during this time study
16 it shows a number of additional things you
17 were doing besides trying to investigate
18 suspicious orders. Again I'm going to show
19 this to you. This includes IRRs from
20 July 3rd, July 4th, July 6th, July 8th and
21 July 11th, five IRRs, and you investigated
22 one order for additional due diligence.

23 A. Yes.

24 Q. I'm handing you what's been
25 marked as 416.

1 (CVS-Burtner Exhibit 416 was
2 marked for identification.)

3 QUESTIONS BY MR. GOETZ:

4 Q. That is an e-mail dated
5 July 19th from you to Pam Hinkle?

6 A. Yes.

7 Q. And if you open it up, it says
8 "LP analyst time study"?

9 A. Yes.

10 Q. And the date of that study is
11 July 18th, 2012, correct?

12 A. Yes.

13 Q. And it has an IRR date of
14 7/17/12, correct?

15 A. Yes, that is correct.

16 Q. You spent 50 minutes?

17 A. According to this, yes.

18 Q. And you investigated zero
19 orders.

20 MR. HYNES: Objection to form.

21 A. According to the time study,
22 yes.

23 QUESTIONS BY MR. GOETZ:

24 Q. You did on this day spend a
25 half hour at the second-to-last entry

1 researching replacement pads for earmuffs,
2 didn't you?

3 Do you see the -- I go back to
4 the first page. Right on the first page,
5 right under the SOM stuff, you research
6 replacement pads for earmuffs on this day,
7 right?

8 A. Yes. That's in reference to
9 safety equipment that we used in the
10 warehouse.

11 Q. It has nothing to do with SOM,
12 does it?

13 A. No. At this time I was
14 splitting my effort between LP and analyst.

15 Q. I'm going to hand you what's
16 been marked as 417.

17 (CVS-Burtner Exhibit 417 was
18 marked for identification.)

19 QUESTIONS BY MR. GOETZ:

20 Q. That is an e-mail dated
21 August 23rd, 2012. Do you see that?

22 A. Yes.

23 Q. And if you open it up it's a
24 time study from August 22nd, 2012, correct?

25 A. Yes.

1 Q. And on that day you reviewed
2 the IRR from 8/21/12, correct?

3 A. Yes.

4 Q. You spent 30 minutes?

5 A. According to the time study,
6 yes.

7 Q. And you looked at zero orders
8 again, right?

9 A. According to the time study.

10 MR. HYNES: Objection to form.

11 A. According to the time study.

12 QUESTIONS BY MR. GOETZ:

13 Q. You did additional due
14 diligence on zero orders, correct?

15 A. According to the time study on
16 this day.

17 (CVS-Burtner Exhibit 418 was
18 marked for identification.)

19 QUESTIONS BY MR. GOETZ:

20 Q. I'm going to hand you what's
21 been marked as 418. The front page indicates
22 that's an e-mail from you to Pam Hinkle dated
23 9/10 of '12?

24 A. Yes.

25 Q. And that is a time study from

1 9 -- 9/7/12, correct?

2 A. Correct.

3 Q. And you reviewed the 9/6/12
4 IRR?

5 A. Yes.

6 Q. And it took you 15 minutes?

7 A. According to the time study,
8 yes.

9 Q. And on that day, you had two
10 orders for additional due diligence, correct?

11 A. According to the time study,
12 yes.

13 Q. And one was for order --
14 Store #3235?

15 A. Yes.

16 Q. And you took 10 minutes
17 investigating that, correct?

18 A. On this day, yes.

19 Q. And one was for order --
20 Store #828?

21 A. Yes.

22 Q. And you took 10 minutes, didn't
23 you?

24 A. According to the time study,
25 yes.

1 Q. I'm going to show you one more.

2 No, I'm done.

3 MR. GOETZ: Let me have 424 and
4 425.

5 QUESTIONS BY MR. GOETZ:

6 Q. Do you have any reason to think
7 that those time studies we just looked at
8 don't accurately reflect --

9 A. No, I do not.

10 Q. -- your day?

11 A. No, I do not.

12 Q. I'm going to show you what's
13 been marked as 424 and 425. 424 is the
14 e-mail and 425 are the notes. I apologize
15 for my reach.

16 (CVS-Burtner Exhibit 424 was
17 marked for identification.)

18 (CVS-Burtner Exhibit 425 was
19 marked for identification.)

20 QUESTIONS BY MR. GOETZ:

21 Q. Do you see that e-mail? That
22 is an e-mail from Craig Schiavo, and it's to
23 a number of people, including you?

24 A. Yes, I see that.

25 Q. And that's an e-mail dated

1 November 29th, 2012, correct?

2 A. Yes, that is the date.

3 Q. And Mr. Schiavo indicates that
4 he's attaching his notes from that meeting
5 that you guys had, correct?

6 A. Yes, I believe so.

7 Q. It says: List of opportunities
8 (my notes) from our meeting on 11/27?

9 A. Yes, I see that. Yes.

10 Q. Okay. And if -- could you go
11 to the notes, please? Do you see it says:
12 Opportunities - Current SOM Process?

13 A. Yes, I see that.

14 Q. Could you go to paragraph 8,
15 please.

16 A. Okay.

17 Q. Paragraph 8 says: 100-plus
18 orders flagged by system, looked (past
19 history, algorithm, max/min).

That's the IRR, correct?

21 MR. HYNES: Objection to form.

22 A. I'm not 100% certain of what
23 he's referring to, but it would appear to be
24 the IRR.

25 --○○○--

1 QUESTIONS BY MR. GOETZ:

2 Q. What else flagged -- what else
3 flagged?

4 A. Whenever we used the 5,000 dose
5 report, we had the hot list reports that we
6 were using. But it would appear that this
7 was the IRR.

8 Q. And then it says: Two to three
9 were stopped by Aaron for review.

10 A. Yes, I see that.

11 Q. And then it says: Deeper dive
12 review, dispensing versus ordering, reach out
13 to store.

14 That's what we were just
15 talking about on your timesheets, correct?

16 A. Right, and those are high-level
17 steps that we would complete, yes.

18 Q. I get it.

19 Does that -- is it fair to
20 assume that -- well, according to this IRR
21 time studies that looked at, I don't know,
22 over a dozen IRRs, you would investigate
23 anywhere from zero to three.

24 But is it fair to assume that
25 those notes are correct, you would normally

1 look at two to three orders per IRR for a
2 deeper-dive review?

3 MR. HYNES: Objection to form.

4 A. I don't -- I don't recall how
5 many orders I would look at.

6 QUESTIONS BY MR. GOETZ:

7 Q. The time studies are probably
8 the best evidence of that, correct?

9 MR. HYNES: Objection to form.

10 A. Perhaps. We looked at, what,
11 12 days over three months.

12 QUESTIONS BY MR. GOETZ:

13 Q. Correct.

14 A. So, I mean, it's a small sample
15 size, and on those specific days we can see
16 how many orders I reviewed. I mean, I don't
17 know if that's enough information for me to
18 say that there's a percentage of orders per
19 IRR that I would review.

20 Q. Mr. Burtner, you filled out
21 these time studies so CVS would have a
22 realistic and an accurate idea of, one, what
23 you were doing, and how many people were
24 needed in the SOM program, correct?

25 MR. HYNES: Objection to form.

1 A. Yes, I believe that was part of
2 the reason.

3 QUESTIONS BY MR. GOETZ:

4 Q. And you would fill those out
5 for typical days, correct?

6 MR. HYNES: Objection to form.

7 A. I believe I filled it out every
8 day, yes.

9 QUESTIONS BY MR. GOETZ:

10 Q. Okay. And trust me, to the
11 extent that there are IRRs in there that show
12 you're reviewing 40 or 50 or 20 orders a day,
13 your counsel will find them and point them
14 out.

15 MR. HYNES: Is that a question?

16 QUESTIONS BY MR. GOETZ:

17 Q. And I promise you there are
18 not, okay?

19 MR. HYNES: Objection to the
20 question, narrative.

21 QUESTIONS BY MR. GOETZ:

22 Q. My question is: Based upon
23 what we've looked at, what percentage of
24 orders do you think you were reviewing?

25 MR. HYNES: Objection, asked

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23 Q. Mr. Burtner, I'm going to hand
24 you what's been marked as 420. Actually,
25 strike that, because I think I might have one

1 that has headings you can read.

2 MR. HYNES: Do you want to put
3 it up here?

4 QUESTIONS BY MR. GOETZ:

5 Q. Yeah. Mr. Burtner, I'm going
6 to hand you what's been marked as
7 Exhibit 422.

10 MR. GOETZ: No, you don't have
11 to.

12 MR. HYNES: Give that back to
13 him.

14 QUESTIONS BY MR. GOETZ:

15 Q. And that is what's been marked
16 as 422.

17 (CVS-Burtner Exhibit 422 was
18 marked for identification.)

19 QUESTIONS BY MR. GOETZ:

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12 Q. What this tells you is how much
13 was shipped to the pharmacy and how much was
14 dispensed from the pharmacy, correct?

15 A. Correct.

16 Q. It tells you whether or not
17 there's theft within that system, correct?

18 MR. HYNES: Objection to form.

19 A. Correct, but dispensed versus
20 shipped was information that we would use as
21 part of our investigation.

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9 Q. You would not have put

10 something --

11 (Telephonic interruption.)

THE VIDEOGRAPHER: We are now

13 going off the record, and the time is

14 3:28 p.m.

15 (Recess taken, 3:28 p.m. to

16 3:37 p.m.)

THE VIDEOGRAPHER: We are now

18 going back on the record, and the time

19 is 3:37 p.m.

20 QUESTIONS BY MR GOETZ:

21 Q Mr Burtner, could you go back

22 to page 2 of Exhibit 406?

23 A Okay

24

25

24 Q. All right. And in any event,
25 when you do that, then at the end, you

1 document the review on the recap spreadsheet,
2 correct?

3 A. Yes. According to this flow
4 map, yes.

5 Q. So again, if you do a review of
6 a high-volume store, that should show up on a
7 recap spreadsheet.

8 MR. HYNES: Objection to form.

9 A. Yes, according to the flow map,
10 yes.

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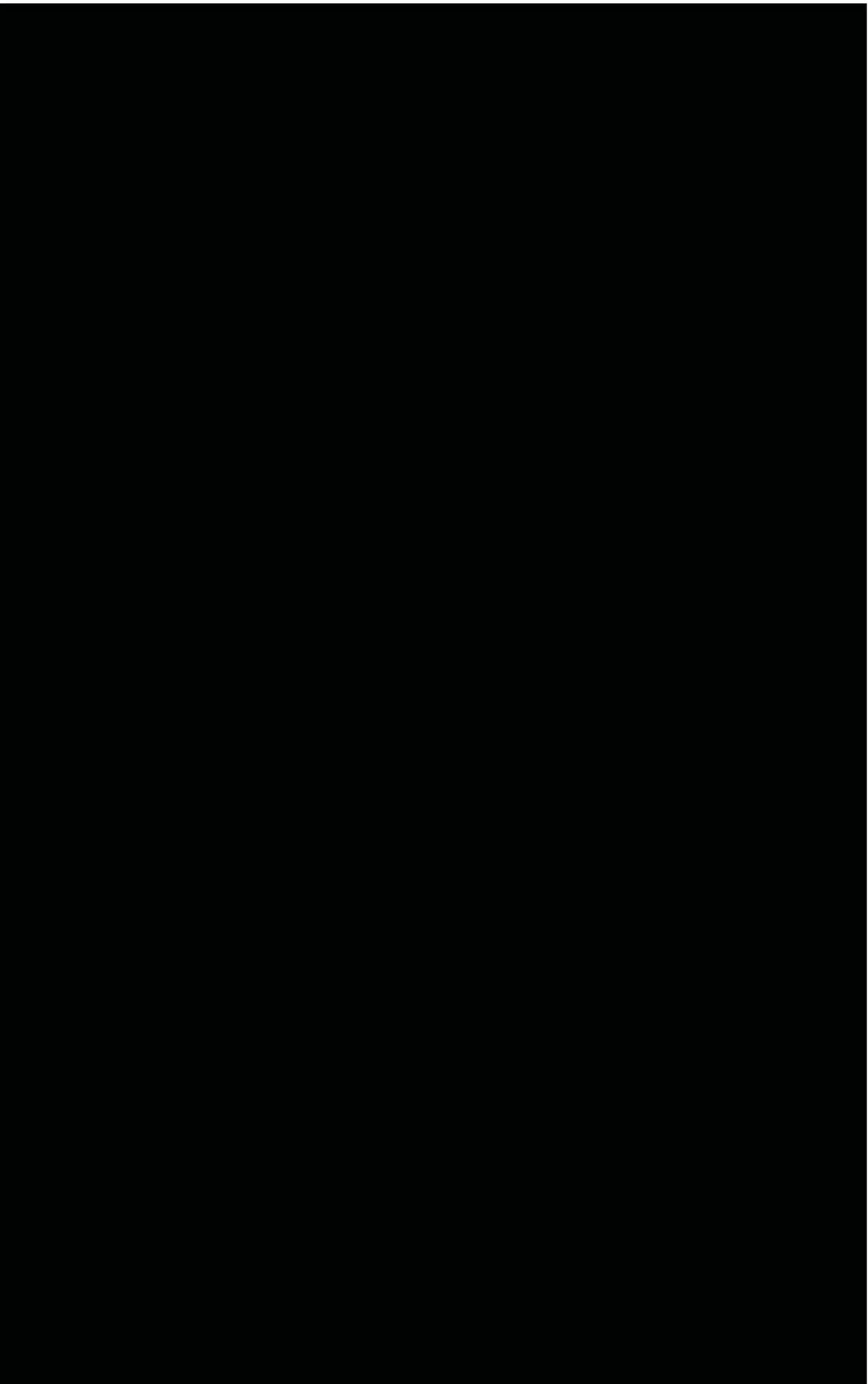
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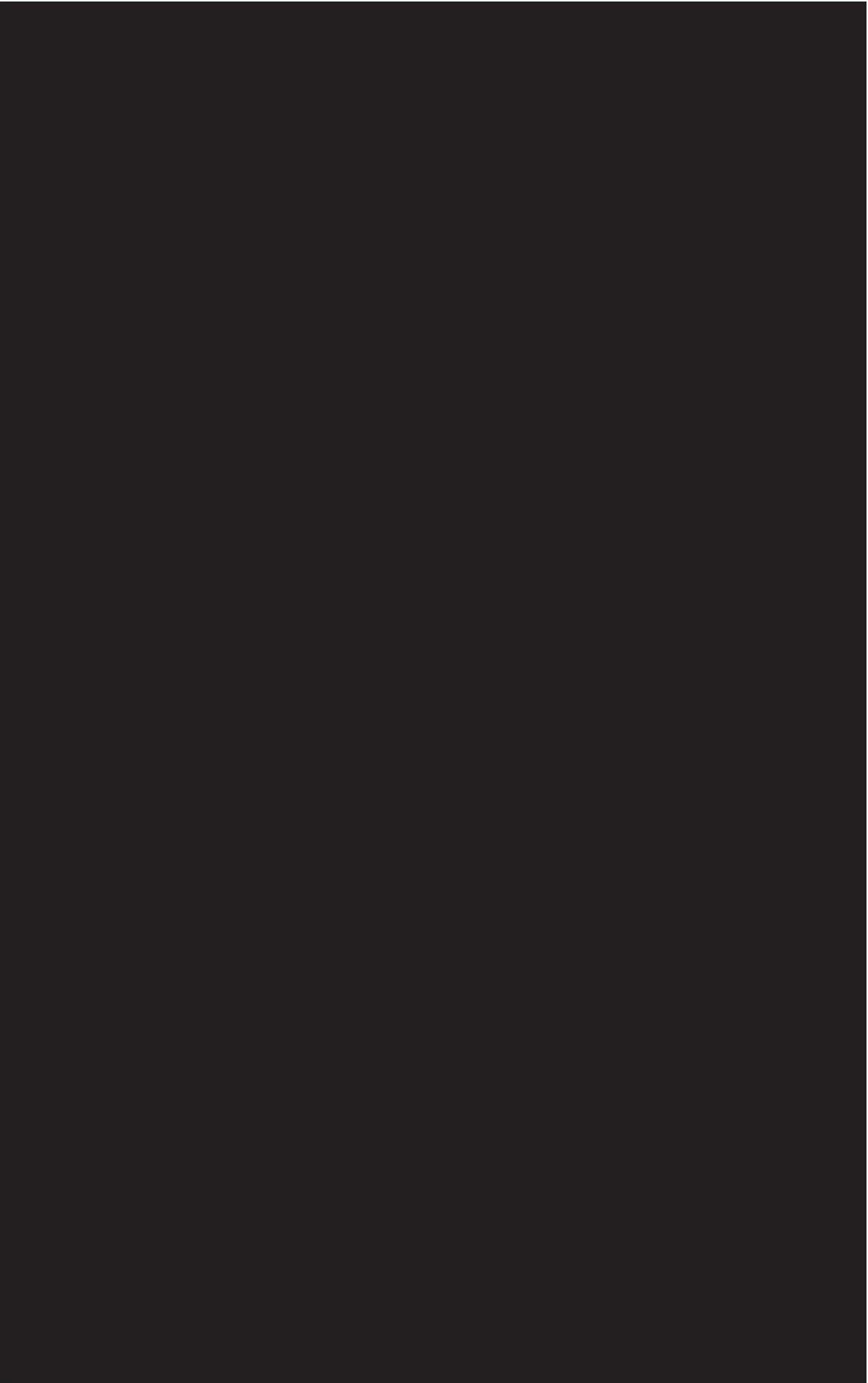
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7 MR. HYNES: Can we take a break
8 at a convenient time?

9 MR. GOETZ: I'll take a break
10 if you want. It doesn't matter.

11 MR. HYNES: Okay.

12 THE VIDEOGRAPHER: Okay. We
13 are now going off the record, and the
14 time is 4:33 p.m.

15 (Recess taken, 4:33 p.m. to
16 4:45 p.m.)

17 THE VIDEOGRAPHER: We are now
18 going back on the record, and the time
19 is 4:45 p.m.

20 QUESTIONS BY MR. GOETZ:

21 Q. Mr. Burtner, I'm going to show
22 you three exhibits. It's 437, 438 and 445.

23 (CVS-Burtner Exhibit 437 was
24 marked for identification.)

25 (CVS-Burtner Exhibit 438 was

1 marked for identification.)

2 (CVS-Burtner Exhibit 445 was

3 marked for identification.)

4 QUESTIONS BY MR. GOETZ:

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23 Q. We had earlier, when we looked
24 at your spreadsheet -- okay. When we looked
25 at your spreadsheet earlier, 406, that

1 flowchart; do you remember?

2 A. Yes.

3 Q. That indicates everything that
4 you do a deep dive on is put on the IRR
5 recap, correct?

6 MR. HYNES: Objection to form.

7 A. Yes. The flowchart indicates
8 that that was the process.

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25 Q. Have you learned that in your

1 prep?

2 MR. HYNES: Objection. Don't
3 answer.

4 QUESTIONS BY MR. GOETZ:

5 Q. Strike that.

6 MR. HYNES: Come on, Dan.

7 QUESTIONS BY MR. GOETZ:

8 Q. And I apologize. Strike that.

9 MR. GOETZ: I apologize.

10 QUESTIONS BY MR. GOETZ:

11 Q. Mr. Burtner, the first lawsuit
12 to be tried relates to what we call CT-1,
13 Case Track 1, and that involves CVS
14 pharmacies or the distribution to CVS
15 pharmacies in Cuyahoga and Summit County,
16 okay?

17 A. Okay.

18 Q. And so this listing I will
19 represent to you is our understanding, as
20 produced by CVS, of the Case Track 1 stores.

21 A. Okay.

22 Q. So --

23 A. So the stores in those two
24 counties.

25 Q. Yes, sir.

1 A. Okay.

2 MR. GOETZ: And I apologize,

3 Paul.

4 QUESTIONS BY MR. GOETZ:

5 Q. So when I say CT-1 stores, I'm
6 talking about these stores in Cuyahoga and
7 Summit County, okay?

8 A. Understood.

9 (CVS-Burtner Exhibit 440 was
10 marked for identification.)

11 QUESTIONS BY MR. GOETZ:

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1 QUESTIONS BY MR. GOETZ:

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20 Q. Okay. I make the assumption
21 that this is a document, a control recap from
22 February 6 of '13 to 12/30 of '13. A
23 significant period of this you were the
24 IRR -- the SOM manager.
25 Would you be surprised if I

1 told you that during that period, one order
2 in the CT-1 stores received a deep dive?

3 MR. HYNES: Objection to form.

4 A. I can't comment as to whether
5 or not I'd be surprised. We weren't
6 necessarily looking at specific regions or
7 states to indicate whether or not we would --
8 we would further deep-dive a store. When we
9 were going through the IRR, I mean, as you
10 can see, we know where the origin DC is, but
11 we don't know where the store is.

12 QUESTIONS BY MR. GOETZ:

13 Q. I understand. One order. One
14 order in two of the largest counties in a
15 state that is decimated by the opioid crisis
16 got additional due diligence.

17 Does that surprise you?

18 MR. HYNES: Objection to form;
19 lack of foundation, asked and
20 answered.

21 A. Again, I can't comment as to
22 whether or not it surprises me. All I can
23 say is we were not looking at the state that
24 the store was in to determine -- as any part
25 of the determining factor as to whether or

1 not we would complete a deep dive.

2 QUESTIONS BY MR. GOETZ:

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6 Q. What if I told you that the
7 other IRR, Exhibit 441, went from
8 January 11th to June of 2012?

9 A. This is a recap from December
10 '10 to November -- or June 2012.

11 Q. To June of 2012. What if I
12 told you that one order got additional due
13 diligence --

14 MR. HYNES: Objection to form.

15 QUESTIONS BY MR. GOETZ:

16 Q. -- for the CT-1 stores. Would
17 that surprise you, over 18 months?

18 MR. HYNES: Objection to form;
19 lack of foundation.

20 A. Again, I can't comment as to
21 whether or not I'd be surprised. Again, we
22 weren't looking at states as part of our due
23 diligence -- or part of our review of the
24 IRR.

25 --OOo--

1 QUESTIONS BY MR. GOETZ:

2 Q. Over an 18-month period in the
3 CT-1 stores, Cuyahoga and Summit County,
4 okay, during that period, you looked at one
5 order where you might have looked at the
6 store metrics or you might have looked at the
7 pharmacies, you might have looked at the
8 patients, you might have looked at the cash
9 trend, you might have looked at how far the
10 patients were coming, you might have looked
11 at whether it was pill mills; one time over
12 18 months, correct?

13 MR. HYNES: Objection. Calls
14 for speculation.

15 A. I don't know. I don't know if
16 that -- if that's true or not.

17 QUESTIONS BY MR. GOETZ:

18 Q. Do you have any reason to
19 believe these IRRs are not accurate?

20 MR. HYNES: Objection to the
21 form.

22 QUESTIONS BY MR. GOETZ:

23 Q. The IRR recaps, I apologize.

24 MR. HYNES: He said he didn't
25 recall them.

1 A. I mean, sitting here today, I
2 have no reason to believe that they're
3 inaccurate, but I don't -- that doesn't
4 indicate that they are.

5 (Discussion off the
6 stenographic record.)

7 MR. HYNES: How much time? 20
8 minutes?

9 MR. GOETZ: 40.

10 QUESTIONS BY MR. GOETZ:

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11 MR. HYNES: Objection.

12 QUESTIONS BY MR. GOETZ:

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4 QUESTIONS BY MR. GOETZ:

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20 MR. GOETZ: I'm done.

21 THE VIDEOGRAPHER: Going off?

22 Should we go off the record?

23 MR. GOETZ: Yeah.

24 THE VIDEOGRAPHER: We are now
25 going off the record, and the time is

1 5:27 p.m.

2 (Recess taken, 5:27 p.m. to
3 5:27 p.m.)

4 THE VIDEOGRAPHER: We're going
5 back on the record and the time is
6 5:27 p.m.

7 MR. GOETZ: Mr. Burtner, I have
8 marked and I'm going to put into the
9 record that chart we made about the
10 time studies, okay? And I've marked
11 that as Exhibit 500.

12 And I am actually going to mark
13 that chart as Exhibit 501A and 501B.
14 Okay?

15 Now we're done.

16 (CVS-Burtner Exhibit 500 was
17 marked for identification.)

18 (CVS-Burtner Exhibit 501A was
19 marked for identification.)

20 (CVS-Burtner Exhibit 501B was
21 marked for identification.)

22 THE VIDEOGRAPHER: We're going
23 off the record and the time is
24 5:28 p.m.

25 (Recess taken, 5:28 p.m. to

1 5:30 p.m.)

2 THE VIDEOGRAPHER: We are now
3 going back on the record, and the time
4 is 5:30 p.m.

5 FURTHER EXAMINATION

6 QUESTIONS BY MR. BAKER:

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22 Q. Okay. Mr. Vanelli was whom?

23 A. Mr. Vanelli was a vice

24 president, I believe, within CVS.

25 Q. And Mr. Schiavo was whom?

1 A. A program manager, I believe on
2 the compliance team.

3 Q. He was Kelly's boss? Is that
4 right?

5 A. I don't know that to be true.

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1 please.

(CVS-Burtner Exhibit 85 was
marked for identification.)

4 QUESTIONS BY MR. BAKER:

5 Q. Actually, I'll give you a
6 highlighted one if you'd like. To get
7 straight --

8 MR. HYNES: Do you want this
9 one to put into the record, though?

10 MR. BAKER: It doesn't matter.

11 The non-highlighted can go in.

12 MR. HYNES: All right.

13 QUESTIONS BY MR. BAKER:

15 QUESTIONS BY MR. BAKER:

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1 Q. And who was Andy Eck?

2 A. Andy Eck was also a loss
3 prevention supervisor at the Indy DC.

4 Q. Okay. And at the time you were
5 receiving these e-mails and responding to
6 them, you were already at Amazon doing your
7 current job, correct?

8 A. Yes, that is correct.

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19 Who is she? Shauna who?

20 A. That would be Shauna Helfrich.

21 Q. Okay. And she was the lady
22 that took over to be the helper? Is that
23 right?

24 MR. HYNES: Objection to form.

25 A. She was initially a flex

1 associate in mid -- I'm sorry, late 2012, and
2 then by the time I left she was essentially
3 working as a full-time analyst on the SOM
4 team.

5 QUESTIONS BY MR. BAKER:

6 Q. Okay. You know that for a fact
7 or you just suspect that?

8 A. No, I recall that she was up in
9 our area most of the time.

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20 MR. BAKER: That's all I have.

21 Thank you.

22 MR. HYNES: I have just a few
23 minutes of follow-ups, so can we just
24 break for a minute?

25 THE VIDEOGRAPHER: We are now

1 going off the record, and the time is
2 5:40 p.m.

8 EXAMINATION

9 QUESTIONS BY MR. HYNES:

10 Q. Good evening, Mr. Burtner. As
11 you know, my name is Paul Hynes. I just have
12 a few follow-up questions for you real quick.

13 Have you ever, before today,
14 been deposed?

15 A. No, I have not.

16 Q. Okay. And counsel for the
17 plaintiffs, both Mr. Baker and Mr. Goetz,
18 asked you a lot of questions today, didn't
19 they?

20 A. Yes, that is true.

21 Q. And did you find some of those
22 questions to be confusing?

23 MR. BAKER: Object to form.

24 A. Yes. At times I wasn't certain
25 what question was being answered or if a

1 question was being answered at all -- or
2 asked at all.

3 QUESTIONS BY MR. HYNES:

4 Q. Okay. And you worked at CVS in
5 SOM for a total of approximately one and a
6 half years, correct?

7 A. Approximately, yes.

8 Q. Okay. And you were the SOM
9 manager for about six months of that time,
10 right?

11 A. Yes.

12 Q. Okay. And you were in that
13 position until June of 2013 when you left
14 CVS.

15 A. Yes.

16 Q. And you've worked at Amazon
17 here in Seattle ever since then?

18 A. Yes, that is correct.

19 Q. Okay. And you've had nothing
20 to do with SOM since you left CVS?

21 MR. BAKER: Object to form.

22 A. No, I have not.

23 QUESTIONS BY MR. HYNES:

24 Q. And you've had nothing to do
25 with the pharmaceutical industry since you

1 left CVS?

2 A. No, I have not.

3 Q. And you don't recall everything
4 that you did six years ago when you were
5 working in SOM at CVS, do you?

6 MR. BAKER: Object to form.

7 A. No, definitely not.

8 QUESTIONS BY MR. HYNES:

9 Q. Okay. And you were shown a lot
10 of documents today, weren't you?

11 A. Yes, I was.

12 Q. Okay. And you don't recall
13 seeing a lot of those documents before you
14 saw them today during your deposition, do
15 you?

16 MR. BAKER: Object to form.

17 Also you're opening the door for me to
18 ask him about your discussions with
19 him, if you want to get into that.

20 MR. HYNES: What's that?

21 MR. BAKER: You're opening the
22 door for me to ask him about your
23 discussions with him by asking that
24 question, just to let you know.

25 QUESTIONS BY MR. HYNES:

1 Q. Let me rephrase the question.

2 You don't recall seeing the
3 documents during your time at CVS, do you?

4 Many of those documents?

5 MR. BAKER: Object to form.

6 A. No. Many of the forms I did
7 not recall seeing.

8 QUESTIONS BY MR. HYNES:

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MR. HYNES: I have no further

1 questions.

2 MR. BAKER: I have a few.

3 FURTHER EXAMINATION

4 QUESTIONS BY MR. BAKER:

5 Q. You said you've had nothing to
6 do with the pharmaceutical industry since you
7 left CVS, correct?

8 A. Yes, that is correct.

9 Q. Well, you've met with their
10 lawyer, who is also your lawyer, who is
11 sitting right next to you. That's the
12 pharmaceutical industry, isn't it?

13 MR. HYNES: Objection to form.

14 QUESTIONS BY MR. BAKER:

15 Q. Right?

16 A. Yes.

17 Q. So you have had something to
18 do. You've met with the lawyer that
19 represents CVS who's sitting right next to
20 you, asking you questions, and you've also
21 had that lawyer agree to be your lawyer
22 personally here today in Seattle where you
23 work where we're taking your deposition,
24 correct?

25 MR. HYNES: Objection to form.

1 A. I was never under the
2 understanding that he was my lawyer. I was
3 under the understanding that I was here on
4 behalf of CVS, answering questions as a
5 former employee.

6 QUESTIONS BY MR. BAKER:

7 Q. At the beginning of this
8 deposition, you heard the lawyer sitting next
9 to you identify himself as representing CVS
10 and representing Aaron Burtner.

11 You heard that, didn't you?

12 A. Yes, I believe that was the
13 statement.

14 Q. That is your lawyer sitting
15 right next to you, within three feet of you
16 the whole time of this deposition, correct?

17 MR. HYNES: Objection to form.

18 QUESTIONS BY MR. BAKER:

19 Q. Right?

20 A. Again --

21 Q. That's your lawyer?

22 A. I was never under the
23 understanding he was my lawyer.

24 Q. Well, he says he is. Is he
25 your lawyer or not?

1 MR. HYNES: Objection, asked
2 and answered.

3 A. I don't know. I don't know if
4 he's classified as my lawyer or not. I don't
5 know.

6 QUESTIONS BY MR. BAKER:

7 Q. So the things that you say you
8 can't remember, the things that you're
9 talking about on this IRR, this is something
10 that you say you did every single day from
11 the time that you started into the SOM
12 program until the time you left at CVS; every
13 day that you showed up for work, this is what
14 you did, for months.

15 MR. HYNES: Objection to the
16 form.

17 QUESTIONS BY MR. BAKER:

18 Q. Right?

19 A. Yes.

20 Q. And now you're telling us that
21 you can't remember it just because it was a
22 certain time period ago. Right? You can't
23 remember the details of it, even though you
24 did it every stinking day for about a year.
25 Am I right?

1 MR. HYNES: Objection to form.

2 A. I recall the form. I don't
3 recall the specifics of the metrics that are
4 on the form, no.

5 QUESTIONS BY MR. BAKER:

6 Q. Well, he just asked you, were
7 you familiar with every number on the form
8 and what it represented in relation to your
9 review. Do you remember that line of
10 questioning?

11 MR. HYNES: Objection to form.

12 QUESTIONS BY MR. BAKER:

13 Q. Do you remember that?

14 A. I recall him asking me if I
15 recall all of the documents that we've
16 reviewed today.

17 Q. No, he asked you were you
18 familiar with all the numbers and what they
19 identified on the IRR. Do you remember that?
20 Remember that line of questioning?

21 A. Not specifically, no.

22 Q. Okay. The truth is, you don't
23 remember everything on that IRR because you
24 didn't know what it represented even when you
25 worked at CVS, correct?

1 MR. HYNES: Objection, form.

2 A. No, I don't agree with that.

3 QUESTIONS BY MR. BAKER:

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14 QUESTIONS BY MR. BAKER:

15 Q. Right. And you actually
16 have -- you've seen IRRs before you came in
17 here today. You've seen IRRs within the last
18 two days, have you not?

19 MR. HYNES: Objection. Don't
20 answer the question. I'm objecting on
21 work product. Don't answer the
22 question.

23 QUESTIONS BY MR. BAKER:

24 Q. Well, he wasn't your lawyer
25 when you reviewed them. Is that right?

1 MR. HYNES: Bill, I went for
2 four minutes. You're at five now.

3 QUESTIONS BY MR. BAKER:

4 Q. Was he your lawyer when you met
5 with him to review for this deposition, or
6 not?

7 A. I don't know.

8 Q. Okay. If you don't know, then
9 he wasn't. So did you review IRRs with this
10 gentleman when he met with you?

11 MR. HYNES: Objection to form.

12 Objection --

13 QUESTIONS BY MR. BAKER:

14 Q. Yes or no?

15 MR. HYNES: Objection on work
16 product. He's not going to answer the
17 question.

18 QUESTIONS BY MR. BAKER:

19 Q. He wasn't your lawyer.

20 MR. BAKER: You weren't his
21 lawyer. He says you weren't his
22 lawyer.

23 MR. HYNES: And you're out of
24 time --

25 --○○○--

1 QUESTIONS BY MR. BAKER:

2 Q. Was he your lawyer or not? Was
3 he your lawyer or not?

4 A. You're out of time.

5 MR. HYNES: He's not answering
6 the question.

7 MR. GOETZ: I don't think
8 necessarily we're out of time. How
9 much time was preserved from our
10 initial -- and we can look at the
11 protocol. We actually have that time
12 available.

13 MR. HYNES: Okay. Forget about
14 the time.

15 THE VIDEOGRAPHER: 24 minutes.

16 MR. HYNES: I made the
17 objection. He's not answering the
18 question.

19 QUESTIONS BY MR. BAKER:

20 Q. Was he your lawyer or not when
21 you met to prepare for this deposition?

22 MR. HYNES: Objection, asked
23 and answered.

24 QUESTIONS BY MR. BAKER:

25 Q. No. Answer the question. Was

1 he your lawyer or not?

2 MR. HYNES: Objection, asked
3 and answered.

4 A. I don't know.

5 QUESTIONS BY MR. BAKER:

6 Q. You don't know.

7 A. I don't know.

8 Q. Did you pay him money to
9 represent you?

10 MR. HYNES: Objection.

11 A. No, I have not.

12 QUESTIONS BY MR. BAKER:

13 Q. Okay. Has CVS paid you any
14 money for the time that you're missing from
15 work?

16 A. No.

17 Q. Okay. How many hours have you
18 met with this gentleman sitting next to you?

19 A. Approximately 40. I don't
20 know.

21 Q. 40 hours? 40 hours you
22 prepared for this deposition. Is that right?

23 A. I believe so.

24 Q. And you're going to tell me
25 that during that 40 hours, you didn't review

1 one IRR?

2 MR. HYNES: Objection, work
3 product. He's not answering that
4 question.

5 QUESTIONS BY MR. BAKER:

6 Q. After 40 hours --

7 MR. HYNES: Your witnesses
8 don't answer that question.

9 QUESTIONS BY MR. BAKER:

10 Q. After 40 hours of review,
11 you're going to sit here, look into this
12 camera and tell this jury that you don't
13 remember whether or not you can interpret
14 something on that IRR number by number. Is
15 that what you're saying?

16 A. Yes, sitting here today, I
17 cannot sit -- I cannot sit here and interpret
18 every single number on that IRR.

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11 QUESTIONS BY MR. BAKER:

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8 MR. BAKER: Those are all my
9 questions. Thank you.

10 MR. GOETZ: Do you have
11 anything?

12 MR. HYNES: No, I don't.

13 THE VIDEOGRAPHER: Okay. We're
14 concluded. This concludes the
15 deposition of Aaron Burtner. We are
16 now going off the record, and the time
17 is 6:00 p.m.

18 (Deposition recessed at
19 6:00 p.m.)

20 (Signature was reserved.)

21 --OOO--

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CERTIFICATE

2

3 I, SUSAN PERRY MILLER, Registered
4 Diplomate Reporter, Certified Realtime
5 Reporter, Certified Court Reporter and Notary
6 Public, do hereby certify that prior to the
7 commencement of the examination, AARON
8 BURTNER was duly sworn by me to testify to
9 the truth, the whole truth and nothing but
the truth;

10

That pursuant to Rule 30 of the
Federal Rules of Civil Procedure, signature
of the witness was reserved by the witness or
other party before the conclusion of the
deposition;

11

That the foregoing is a verbatim
transcript of the testimony as taken
stenographically by and before me at the
time, place and on the date hereinbefore set
forth, to the best of my ability.

12

I DO FURTHER CERTIFY that I am
neither a relative nor employee nor attorney
nor counsel of any of the parties to this
action, and that I am neither a relative nor
employee of such attorney or counsel, and
that I am not financially interested in the
action.

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Susan Perry Miller
CSR-TX, CCR-LA, CSR-CA-13648
Registered Diplomate Reporter
Certified Realtime Reporter
Certified Realtime Captioner
NCRA Realtime Systems Administrator
Notary Public, State of Texas
My Commission Expires 03/30/2020

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Dated: 22nd of January, 2019

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ACKNOWLEDGMENT OF DEPONENT

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4

I, AARON BURTNER, do hereby
certify that I have read the foregoing pages
and that the same is a correct transcription
of the answers given by me to the questions
therein propounded, except for the
corrections or changes in form or substance,
if any, noted in the attached
Errata Sheet.

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AARON BURTNER

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ERRATA

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2 LAWYER'S NOTES
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